

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

ORIGINAL
RECEIVED

NOV - 4 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of)	PR Docket No. 93-61
the Commission's Rules)	RM-8013
to Adopt Regulations for)	
Automatic Vehicle)	
Monitoring Systems)	

REPLY OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC.
TO OPPOSITION OF NORTH AMERICAN TELETRAC AND LOCATION
TECHNOLOGIES, INC. TO MOTION TO ACCEPT
SUPPLEMENT TO REPLY COMMENTS

Southwestern Bell Mobile Systems, Inc. ("SBMS"), by its attorneys, hereby replies to the Opposition of North American Teletrac and Location Technologies, Inc. ("Teletrac") to SBMS's Motion to Accept Supplement to Reply Comments ("Motion").^{1/} As shown below, the claims presented in the Teletrac Opposition lack merit and in no way invalidate or diminish the good cause showing found in SBMS's Motion. Moreover, no other party to this proceeding opposes the Motion.^{2/} Accordingly, the Motion should be granted, and the paper prepared by SBMS's economic expert, Dr. Leland L. Johnson ("Competition In Wideband Location Monitoring Services"), should be incorporated into the record of this proceeding.

^{1/} The SBMS Motion was filed in the above-captioned proceeding on October 15, 1993.

^{2/} SBMS served its Motion, either by hand or first class mail, on the eighty-plus parties to this proceeding.

No. of Copies rec'd 054
List ABCDE

Teletrac's Opposition advances three grounds for rejecting SBMS's Motion: (1) granting the SBMS Motion will result "in essence" in the opening of a new round of comments;^{3/} (2) including Dr. Johnson's study in the record will "compromise the fair and efficient resolution of rulemaking proceedings;"^{4/} and (3) SBMS will suffer no prejudice if the Motion is denied.^{5/} These assertions are rebutted in sequence below.

The support provided for Teletrac's first assertion is illogical. According to Teletrac, the SBMS Motion portends an entirely new comment cycle because, if granted, it will compel Teletrac to "turn again to its expert economists" to respond to Dr. Johnson. This claim, however, contradicts Teletrac's conclusion that the proposed Supplement adds nothing to the existing record because SBMS's previously filed Reply Comments "advanc[e] essentially the same arguments" as those found in Dr. Johnson's study.^{6/}

If the SBMS Supplement merely restates SBMS's previously-filed Reply Comments, Teletrac's need to engage economic experts to fashion a rebuttal is superfluous and self-contradictory. Indeed, Teletrac's proposed rebuttal would apparently be inconsistent with Commission Rules which preclude a participant in a rulemaking proceeding from responding to reply comments absent a specific

^{3/} Teletrac Opposition at 1.

^{4/} Id. at 2.

^{5/} Id.

^{6/} Id. at 1-2.

Commission authorization (although SBMS will not oppose Teletrac's request for such authorization).^{7/} In any event, Teletrac cannot have it both ways-- SBMS's Supplement is either innocuously duplicative of its Reply Comments or requires an immediate substantive reply by Teletrac's formidable economic experts, not both. That Teletrac feels compelled to provide such a substantive reply (and even proposes (at page 3) its own deadline for such a filing) is an admission that SBMS's Supplement raises critical new issues with respect to the Schmalensee-Taylor Study.

Teletrac next contends that including the Supplement in the record will obstruct this proceeding's fair and efficient resolution. As already shown, however, Teletrac's evident need to reply to the SBMS Supplement demonstrates that Dr. Johnson's critical analysis of Schmalensee-Taylor constitutes a substantive addition to the existing record. Arbitrarily excluding this contribution from the record will be patently unfair and result in an indisputably incomplete record.

Such arbitrary exclusion will also prejudice SBMS's position in this proceeding, notwithstanding Teletrac's contrary assertion. Only if it simply echoes SBMS's Reply Comments will SBMS endure no prejudice by the Supplement's rejection. Yet Teletrac's insistence on replying to the Supplement (if SBMS's Motion is granted) conclusively establishes that the predicate for Teletrac's no prejudice claim is erroneous. SBMS will suffer unambiguous

^{7/} See Section 1.415(d) of the Commission's Rules. 47 C.F.R. §1.415(d).

prejudice if Commission and the parties hereto are prohibited from considering Dr. Johnson's critical analysis of Schmalensee-Taylor.^{8/}

For the reasons stated above, the Commission should deny Teletrac's Opposition and immediately grant the SBMS Motion.

Respectfully submitted,

SOUTHWESTERN BELL MOBILE SYSTEMS,
INC.

By: Wayne Watts (775)
Wayne Watts V.P. - General Attorney
Southwestern Bell Mobile Systems,
Inc.
17330 Preston Road, Suite 100A
Dallas, Texas 75252

BY: Jerome K. Blask
Louis Gurman
Jerome K. Blask
Robert L. Hoggarth

Gurman, Kurtis, Blask & Freedman,
Chartered
1400 Sixteenth Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 328-8200

Its Attorneys

November 4, 1993

^{8/} In its Motion, SBMS explained in detail the impediments and delay it encountered in attempting to retain an expert to analyze the Schmalensee-Taylor Study. Nothing in Teletrac's Opposition casts doubt or undermines in any way the validity of that explanation. Teletrac (Opposition at note 1) compares the time required for Dr. Johnson to prepare and submit his analysis with the duration of the reply period in this proceeding, but never suggests why this comparison is relevant. Nor does Teletrac disclose the corresponding interval for preparation of the Schmalensee-Taylor Study.

CERTIFICATE OF SERVICE

I, Ruth E. McGovern, a secretary in the law offices of Gurman, Kurtis, Blask and Freedman, Chartered, do hereby certify that I have on this 4th day of November, 1993, had copies of the foregoing "REPLY OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC. TO OPPOSITION OF NORTH AMERICAN TELETRAC AND LOCATION TECHNOLOGIES, INC. TO MOTION TO ACCEPT SUPPLEMENT TO REPLY COMMENTS" mailed by U.S. first class mail, postage prepaid, to the following:

- * Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Mail Stop Code 0106
Washington, D.C. 20554
- * Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 844
Mail Stop Code 0103
Washington, D.C. 20554
- * Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W., Room 832
Mail Stop Code 0104
Washington, D.C. 20554
- * Ralph A. Haller, Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Mail Stop Code 1700
Washington, D.C. 20554
- * Rosalind K. Allen, Chief
Private Radio Bureau, Rules Branch
Land Mobile and Microwave Division
Federal Communications Commission
2025 M Street, N.W., Room 5202
Washington, D.C. 20554

* Hand Delivered

* Beverly G. Baker, Deputy Chief
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Mail Stop Code 1700
Washington, D.C. 20554

* Brian F. Fontes
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

* Byron F. Marchant
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

* Randall S. Coleman
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

* Steve Sharkey
Private Radio Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5202
Mail Stop Code 1700
Washington, D.C. 20554

Terry L. Fishel, Chief
Land Mobile Branch
Licensing Division
Private Radio Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325

Gary Adams
Chief Telecommunications Officer
California Department of Transportation
1120 N Street
P.O. Box 942873
Sacramento, California 94273-0001

Robert B. Fougner
General Counsel
Cylink Corporation
310 N. Mary Avenue
Sunnyvale, California 94086

* Hand Delivered

Dan J. Gholson
G-TECH Corporation
901 South Route 53, Suite G
Addison, Illinois 60101

Adam Phillips
Dependon Company
1455 Leithon
Mundelein, Illinois 60060

John B. Ramming
James W. Griffin
Texas Turnpike Authority
3015 Raleigh Street
Dallas, Texas 75219

Richard L. Ridings, CEO
Oklahoma Turnpike Authority
3500 Martin Luther King Avenue
P.O. Box 11357
Oklahoma City, Oklahoma 73136-0357

Ronald A. Siegel
Roy R. Russo
Allan R. Adler
Cohn and Marks
1333 New Hampshire Avenue, Suite 600
Washington, D.C. 20036

Paul B. Shutt
Core-Mark International, Inc.
2311 E. 48th Street
Los Angeles, California 90058

Michael Smith
General Manager
Wrag-time Transportation
2059 Belgrave Avenue
Huntington Park, California 90255

David R. Wiedman
Vice President - Sales & Marketing
AccuScan
P.O. Box 80037
1540 Highway 138
Conyers, Georgia 30208-8037

Frank Dorrance
Chairman
AIM Radio Frequency Identification Committee
634 Alpha Drive
Pittsburgh, Pennsylvania 15238-2802

Francine J. Berry
Michael J. Holliday
Ernest A. Gleit
Room 3244J1
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Edwin N. Lavergne
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

John A. Prendergast
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037

James S. Marston
Senior Vice President and Chief Information Officer
American President Companies, Ltd.
1111 Broadway
Oakland, California 94607

Christopher D. Imlay
Booth, Freret & Imlay
1233 20th Street, N.W., Suite 204
Washington, D.C. 20036

Kenneth E. Siegel
Deputy General Counsel
American Trucking Associates
2200 Mill Road
Alexandria, Virginia 22318

Richard E. Wiley
John L. Bartlett
David E. Hilliard
Edward A. Yorkgitis, Jr.
Aliza F. Katz
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Thomas J. Keller
Verner, Liipfert, Bernhard,
McPherson and Hand
901 15th Street, N.W., Suite 700
Washington, D.C. 20005

Kent Britain
1626 Vineyard
Grand Prarie, Texas 75052

Robert S. Butts
2825 31st Street, N.W.
Washington, D.C. 20008-3524

Tom Cackette
Chief Deputy Executive Officer
State of California
Air Resources Board
1010 L Street
P.O. Box 2815
Sacramento, California 95812

Guy S. Kirchhoff
Hardware Engineering Manager
CliniCom
4720 Walnut Street
Suite 106
Boulder, Colorado 80301-2557

Max Rogers
Chief Engineer
Cobra Electronics Corporation
6500 W. Cortland
Chicago, Illinois 60635

Lawrence J. Movshin
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006

James L. Casserly
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

David C. Jatlow
Young & Jatlow
2300 N Street, N.W.
Suite 600
Washington, D.C. 20037

Frank Carlile
Assistant Secretary for Transportation Policy
Florida Department of Transportation
605 Suwannee Street
Tallahassee, Florida 52399-0450

Hunter O. Wagner, Jr.
General Manager
Greater New Orleans Expressway Commission
P.O. Box 7656
Metairie, Louisiana 70010

Michael T. Helm
Route 5 Box 188
Lubbock, Texas 79407

Dwight B. Hill
266 Norcrest Drive
Rochester, New York 14617

Gary M. Epstein
Raymond B. Grochowski
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Donald L. Schilling
Executive Vice President
InterDigital Communications Corp.
833 Northern Boulevard
Great Neck, New York 11021

Neil D. Schuster
Executive Director
International Bridge, Tunnel and Turnpike Association
2120 L Street, N.W., Suite 305
Washington, D.C. 20037

Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

Robert B. Kelly
Kelly, Hunter, Mow & Povich
1133 Connecticut Avenue, N.W.
Washington, D.C. 20036

William J. Kaiser
48025 Fremont Boulevard
Fremont, California 94538

David L. Hill
Audrey P. Rasmussen
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006

Ronald F. Cunningham
Vice President
Transportation Systems and Services
Lockheed IMS
Glenpointe Centre East
Teaneck, New Jersey 07666

George Y. Wheeler
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Henry M. Rivera
Larry S. Solomon
Ginsburg, Feldman & Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Marnie K. Sarver
John J. McDonnell
Matthew J. Harthun
Reed, Smith, Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

David E. Weisman
Alan S. Tilles
Terry J. Romine
Meyer, Faller, Weisman and Rosenberg
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015

David Schlotterbeck
Executive Vice President
Chief Operating Officer
Nellcor Incorporated
25495 Whitesell Street
Hayward, California 94545

Stephen R. Bell
David Alan Nall
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
P.O. Box 407
Washington, D.C. 20044

Albert H. Kramer
Robert F. Aldrich
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Penthouse Suite
Washington, D.C. 20005

* Stanley M. Gorinson
John Longstreth
Preston, Gates, Ellis & Rouvelas Meeds
1735 New York Avenue, N.W., Suite 500
Washington, D.C. 20006-4759

Jack T. Taylor
9215 Rancho Drive
Elk Grove, California 94624

David H. Phillips
Ruth E. Phillips
2901 Accokeek Road West
Accokeek, Maryland 20607-9645

James E. Dunstan
Susan H. Rosenau
Haley, Bader & Potts
Suite 900
4350 North Fairfax Drive
Arlington, Virginia 22203-1633

Robert L. Borchardt, President
Recoton Corporation
2950 Lake Emma Road
Lake Mary, Florida 32746

Howard W. Reynolds
4614 Aspen Hill Court
Rockville, Maryland 20853

Jeffrey L. Ritter
6959 Hovenkamp
Fort Worth, Texas 76118

* Hand Delivered

Timothy Stoffel
Secretary
Rochester VHF Group
P.O. Box 92122
Rochester, New York 14692

Gerald J. Rose
524 N. Quaker Lane
Alexandria, Virginia 22304

Robert H. Schwaninger, Jr.
Brown and Schwaninger
1835 K Street, N.W.
Suite 650
Washington, D.C. 20006

J.R. Beyster
Chairman & CEO
Science Applications International Corporation
1241 Cave Street
La Jolla, California 92037

Warren G. Lavey
James M. Fink
Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive
Chicago, Illinois 60606

William P.N. Smith
P.O. Box 438
No. Reading, Massachusetts 01864

Gordon Schlesinger
Radio Communications Coordinator
Judith L. Young
Attorney
Southern California Gas Company
555 West Fifth Street
Los Angeles, California 90013-1011

Bruce B. Stwertnik
6868 San Bernardo Cir.
Buena Park, California 90620

Peter Tannenwald
Mitchell Lazarus
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339

Debra A. Perelman
Corporate Counsel
Telxon Corporation
3330 W. Market Street
Akron, Ohio 44313

Andrew D. Lipman
Catherine Wang
Swidler & Berlin
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Wray C. Hiser
Deputy General Counsel
Thomson Consumer Electronics, Inc.
6225 Running Ridge Road
Syracuse, New York 13212

Jay E. Padgett, Chairman
Louis Mecseri, Vice Chairman
Mobile & Personal Communications
Consumer Radio Section
Eric J. Schimmel, Vice President
Telecommunications Industry Association
Suite 800
2001 Pennsylvania Avenue
Washington, D.C. 20006

James R. Haynes
Chief Engineer
Uniden America Corporation
8707 North By Northeast Boulevard
Fishers, Indiana 46038

Jon Nelson
Vice President of Engineering
Uniplex Corporation
2905 Country Drive
St. Paul, Minnesota 55117

Thomas J. Tiderington, Group Supervisor
Southeast Florida Regional Task Force
U.S. Department of Justice
Drug Enforcement Administration
Fort Lauderdale District Office
1475 West Cypress Creek Road
Suite 301
Fort Lauderdale, Florida 33309

United States Postal Service
Processing and Distribution Center
433 W. Van Buren Street
Chicago, Illinois 60607-9997
Attention: Joseph Cherr

Jeffrey L. Sheldon
Stan A. Stokes
Utilities Telecommunications Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Jay Brown
Engineering Manager
Medical Data Electronics
12720 Wentworth Street
Arleta, California 91331-4309

Joseph Lazzara
President
Scientific Technologies Incorporated
31069 Genstar Road
Hayward, California 94544-7831

Robert E. Lowell
ARS, Inc.
2400 Sand Lake Road
Orlando, Florida 32809-7666

Tom Sharples
Telescan Systems, Inc.
3455 Edison Way
Menlo Park, California 94025

Richard P. Kelly, Director
Interstate Transportation Department
Port Authority of New York and New Jersey
One World Trade Center
New York, New York 10048

John Hassett, CEO
AT/Comm, Inc.
America's Cup Building
Little Harbor
Marblehead, Massachusetts 01945

Barbara N. McLennan
Consumer Electronics Group
2001 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

John H. Shafer, P.E.
New York State Thruway Authority
200 Southern Boulevard
Albany, New York 12209

Matson Navigation Company
333 Market Street
Post Office Box 7452
San Francisco, California 94120

Maine Turnpike Authority
430 Riverside Street
Portland, Maine 34103

Comtec Information Systems, Inc.
53 John Street
Cumberland, Rhode Island 02864

Harris County Toll Road Authority
330 Meadowfern
Suite 200
Houston, Texas 77067-3295

No addresses were provided by the following Commenters or the addresses provided were not available in the Commission's files and therefore the foregoing Reply Of Southwestern Bell Mobile Systems, Inc. To Opposition Of North American Teletrac And Location Technologies, Inc. To Motion To Accept Supplement To Reply Comments were not served on them:

John White
Chair
The Oregon Region Relay Council

James H. Walters
Chair, PARC Legal Affairs Committee
The Portland Amateur Radio Club

John T. Armstong
PROBE Science

Raymond Chin
Chairman
Proxim Inc.

Thomas Ohlsson
Product Marketing Manager
SpectraLink Corporation

Gene Single, President
The Technology Radio Amateur Club

Gambatte Digital Wireless

Maryland Transportation Authority


Ruth E. McGovern