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1301 K STREET, N.W.

SUITE 900, EAST TOWER

WRITER'S DIRECT DIAL NUMBER

Susan H.R. Jones
(202) 408-7108

WASHINGTON, D.C. 20005

(202) 408-7100

FACSIMILE: (202) 289-1504

CHICAGO, ILLINOIS

November 8, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

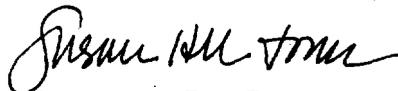
Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Mr. Caton:

Transmitted herewith is an original and four copies of
Comments, filed on behalf of E.F. Johnson Company, in response to
the Notice of Proposed Rule Making, released on October 8, 1993,
in In the Matter of Implementation of Sections 3(1) and 332 of
the Communications Act, Gen. Docket No. 93-252.

Should you have any questions with regard to this pleading,
please contact Russell H. Fox of this office, or the undersigned
counsel.

Sincerely,


Susan H.R. Jones

cc: Chief, Land Mobile and Microwave Division, PRB
Chief, Mobile Services Division, CCB

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

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In the Matter of)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications Act)
)
Regulatory Treatment of Mobile Services)
To: The Commission)

COMMENTS OF E.F. JOHNSON COMPANY

Russell H. Fox
GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

(202) 408-7100

Its Attorneys

November 8, 1993

SUMMARY

E.F. Johnson Company, a leading designer and manufacturer of radio and specialty communications products, is a currently one of the three largest providers of land mobile radio systems in the United States. As both a licensee of 800 MHz Specialized Mobile Radio Systems ("SMR"), and a manufacturer and supplier of equipment to SMR operators across the county, E.F. Johnson is both an interested and qualified party to comment in these proceedings.

In response to a Congressional mandate to effect regulatory parity between broad categories of communications services, the Commission seeks to define and categorize services. E.F. Johnson urges the Commission, in crafting such definitions, to incorporate as a chief focus of a system's functional capabilities, the concept of frequency reuse. Frequency reuse provides the basis for the cellular industry's technological advances to date, and when employed in wide-area SMR systems, can facilitate realistic SMR competition for the cellular market. By using frequency reuse as a criterion, the Commission can ensure the fair application of regulations to true competitors, yet preserve the independence and unburdened operation of small or traditional SMR systems, with limited channel capacity and coverage area, that are not competitive to the cellular industry.

E.F. Johnson also supports the Commission maintaining its present ban on the provision of dispatch services by cellular carriers. E.F. Johnson believes that, if the ban were lifted, the larger capability service providers could drive the current dispatch providers from the market, eliminating a valuable option of mobile communications customers.

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

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In the Matter of

Implementation of Sections 3(n) and 332 of the Communications Act)	GN Docket No. 93-252
)	
Regulatory Treatment of Mobile Services)	
)	
To: The Commission)	

COMMENTS OF THE E.F. JOHNSON COMPANY

The E.F. Johnson Company ("E.F. Johnson" or "the Company"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") adopted in the above referenced proceeding^{1/} designed to adopt a regulatory structure for Mobile Communications Services, pursuant to Congressional mandate, consistent with newly revised Sections 3 (n) and 332 of the Communications Act of 1934 (the "Act").^{2/}

I. INTRODUCTION

E.F. Johnson is a leading designer and manufacturer of radio communications and specialty communications products for commercial and public safety use. Founded 70 years ago as an electronic components manufacturer, E.F. Johnson entered the radio

^{1/} Notice of Proposed Rule Making, GN Docket No. 93-252, FCC 93-454, released October 8, 1993.

^{2/} Pub. L. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993).

communications equipment market in the late 1940's and is one of the three largest providers of land mobile radio systems in the United States. E.F. Johnson is a leader in the specialized mobile radio ("SMR") industry, with a significant share of the domestic installed infrastructure and subscriber radio units. The Company has established trunking protocols and open architecture standards with its Clearchannel LTR[®], a multichannel trunked radio product.

In this proceeding, the Commission seeks to establish a regulatory framework for the mobile communications industry, based upon the recent amendments to the Act. Under revised Section 332, which previously governed the private land mobile radio services, mobile services are now classified as either "commercial mobile service" or "private mobile service". Commercial mobile service providers are generally treated as common carriers under the Act, except that the Commission retains the authority to exempt these entities from various provisions of Title II of the Act. Private mobile services are not subject to any common carrier regulation. The new legislation preempts state entry and rate regulation of both commercial and private mobile services, but allows states to regulate other aspects of commercial mobile services. However, states may petition for authority to regulate commercial mobile rates under circumstances specified by statute.

Based upon the Congressional mandate, the Commission must adopt changes to its regulations, conforming them to the changes to the Act. In particular, the FCC must adopt regulations determining the regulatory treatment of personal communications services ("PCS") and modify its rules for existing services to ensure that it meets the goal of "regulatory parity" specified in the legislation.

E.F. Johnson is a licensee of 800 MHz SMR systems. In addition, it supplies equipment to hundreds of SMR operators across the country, who will be dramatically affected by a restructuring of the regulations governing mobile communications services. Based upon its position in the SMR marketplace, E.F. Johnson possesses a realistic view of the current state of the SMR industry and the future requirements for mobile communications capabilities in the United States.

Although the goal of this proceeding is to achieve regulatory parity, the proposed structure will serve to create great disparities in the provision of dispatch communications services by entrepreneurs. In creating the SMR service, the FCC recognized a need for a vehicle by which small companies could meet their mobile communications requirements by securing service from a third party provider, rather than incurring the cost of securing the infrastructure for a mobile communications system themselves. The proposed regulatory scheme will deprive these original SMR users of the option the Commission intended to provide to them. Because there is a need for private carriers offering high quality, low cost dispatch service, the potential elimination of this alternative, by an unfavorable interpretation of the recent legislation, is not in the public interest. Accordingly, E.F. Johnson is pleased to have the opportunity to submit the following Comments.

II. COMMENTS

A. General

As part of the recently enacted legislation, Congress sought to impose regulatory parity by requiring that the FCC accord similar regulatory treatment to broad categories of

radio communications services.^{3/} All of those services would be recharacterized as commercial mobile services. The definition incorporated in the legislation, unless further refined by the Commission, would include not only PCS and cellular systems, but also virtually all SMR operators. In addition, the legislation permits the Commission, and the FCC has inquired in this proceeding whether it should, to allow commercial mobile service providers to offer dispatch service.^{4/}

The providers of PCS and cellular are licensed, however, to operate with a substantially greater number of frequencies over a broader geographic area than are SMR providers. A definition that does not distinguish between traditional SMR systems and mobile telephone-like mobile communications services, therefore, will have two negative effects. First, it will subject all SMRs, including those with limited channel capacity and coverage area, to the same type of regulatory burdens as common carriers that have, among other resources, more spectrum. In addition, these same commercial mobile service providers would be able to participate in the dispatch business from which they are presently barred by regulation.

^{3/} H.R. Rep. No. 102-213, 103rd Cong. 1st Sess.(1993) ("Conference Report"), at 492-496.

^{4/} The legislation states that entities that were previously regulated as private radio services, that will henceforth be treated as commercial mobile service providers, may continue to offer dispatch services. However, because Section 6002(c)(2)(B) of the legislation provides for a three year transition for existing private systems to comply with new commercial mobile service provider regulations, the ability of these licensees to provide dispatch would, absent Commission action, expire in three years.

E.F. Johnson does not object to similar regulatory treatment for truly similar services. Therefore, it recommends the adoption of a definition of commercial mobile service provider that provides true regulatory parity for entities providing functionally similar services. Accordingly, as discussed in greater detail below, the definition of commercial mobile service provider should incorporate the concept of frequency reuse, which is a fundamental capability of cellular service. Frequency reuse provides the basis for the cellular industry's technological advantages to date.

Those entities employing frequency reuse would all be regulated in a similar fashion. E.F. Johnson supports the current ban on the provision of dispatch service by cellular carriers. Because some SMR systems (as well as other entities) will also be regulated, like cellular carriers, as commercial mobile service providers, they too should be prohibited from offering dispatch service.^{5/} Commercial mobile service providers could still provide dispatch services, but not on those channels designated for commercial mobile services.^{6/}

B. Definitions

Revised Section 332 (d)(1) of the Act states that mobile services will be classified as commercial mobile services if they: 1) are provided for profit; and 2) make interconnected services available to the public or such classes of eligible users as to be effectively available to a substantial portion of the public. Section 332(d) states that private mobile services are

^{5/} The ban on the provision of dispatch service by entities now regulated as SMRs would be effective in three years, as stated in the recent revisions to the Act.

^{6/} E.F. Johnson does not address here the ability of wireline common carriers, who are otherwise prohibited from offering SMR services, to enter the SMR industry. The ability for commercial mobile service providers to offer dispatch services would extend only to those otherwise eligible under today's regulatory structure.

those mobile services that are not commercial mobile services or are not the functional equivalent of a commercial mobile service. Accordingly, private systems will include those services that are not offered for profit nor offer interconnected services to the public. The Commission asks for comments on the definitions of these terms.

For Profit Services-E.F. Johnson agrees with the Commission that entities that are licensed to operate communications facilities on an entrepreneurial basis, that otherwise meet the characteristics outlined by Congress, should be considered commercial mobile service providers. Accordingly, shared systems should not be regulated as commercial providers. Similarly, non-licensee managers should not be regulated as commercial providers of communications services. It will be administratively burdensome for the Commission to determine which shared systems, that should not be regulated as commercial systems, are managed by one of the licensees on a non-profit basis, and which shared systems are managed by a for-profit entity.

Interconnected Services-In order for a particular service to be considered interconnected, it should be offered at the end user level, i.e., the user should have the ability to control access to the public switched telephone network. E.F. Johnson recognizes that the broad scope of this definition would, without further definition, include entities such as small SMR operators, who were not intended to be included in the definition of commercial mobile service providers.^{2/} However, because E.F. Johnson also recommends

^{2/} The definition of interconnect service suggested by E.F. Johnson would also include paging systems, unless, as the Company suggests, they would otherwise be exempt from regulation as commercial mobile service providers because they did not employ a frequency reuse configuration.

that entities that are not "functional equivalents" of commercial providers (because they do not employ frequency reuse) not be regulated as commercial providers, these small SMR providers would not, simply because of their interconnection capabilities, be deemed commercial providers.

Service Available to the Public-E.F. Johnson agrees that services should be considered available to the public if they are offered without distinction. Therefore, "specialized services", offered to different user groups, even though they may be broadly available, would not be considered to be available to the public. The Commission asks whether system capacity should be used as an indicia of when a service is available to the public. E.F. Johnson strongly agrees that capacity is a relevant criterion. However, it submits that system configuration, not the number of channels, should dictate if a system can make service available to the public. Only those systems with sufficient capacity will elect to employ frequency reuse. Accordingly, frequency reuse will be a self selecting indication of whether a system has sufficient capacity to service the general public.

Private Mobile Service-As the Commission correctly points out, there will be entities that fall within the literal definition of commercial mobile service providers, that should not be regulated as such because they are not the "functional equivalents" of commercial mobile service providers. The effect of this interpretation would be to expand the category of entities that would be regulated as private systems and contract the category of entities regulated as commercial mobile systems. However, this approach was specifically contemplated by Congress. In enacting the new provisions of the Act, it stated:

The Commission may determine, for instance, that a mobile service offered to the public and interconnected with the public switched network is not the functional

equivalent of a commercial mobile service if it is provided over a system that, either individually or a part of a network of systems or licensees, does not employ frequency or channel reuse or its equivalent (or any other techniques for augmenting the number of channels of communication made available for such mobile service) and does not make service available throughout a standard metropolitan statistical area or other similar wide geographic area.^{8/}

Accordingly, E.F. Johnson strongly disagrees with the Commission's "alternative" interpretation of the legislative history that would lead to the conclusion that a mobile service that did not meet the statutory definition could be classified as a commercial mobile service provider, if it offered a service that was functionally equivalent to a commercial mobile service provider. E.F. Johnson agrees that functionally equivalent services should be regulated in the same fashion. However, the legislative history plainly indicates that not all entities, despite their apparent inclusion in the commercial mobile service category, should be regulated as such. Therefore, the Commission should set the specific standards for what, on a "functional" basis, should be considered a commercial mobile service, and subject all entities providing equivalent service to the same set of regulatory requirements.

The Commission asks what specific standards should be used to determine whether a mobile service is the functional equivalent of a commercial mobile service. As noted above, E.F. Johnson endorses the frequency reuse criterion as the factor to determine whether a service is the functional equivalent of commercial mobile service. Entities that employ frequency reuse will, because of their capacity, be more appropriately regulated as common carriers.

^{8/} Conference Report at 496.

C. Regulatory Classification of Existing Services

Existing Private Services-E.F. Johnson agrees with the Commission that wide area SMR systems should be regulated as commercial mobile systems. However, the Company contends that only those wide area systems employing frequency reuse should be so characterized. Accordingly, the designation of an entity as a wide area SMR, by itself, would not result in treatment as a commercial mobile service provider. The additional services that the Commission intends to authorize at 800 MHz and 900 Mhz for wide area SMR systems^{2/}, because they envision the authorization of channels over a wide area explicitly for frequency reuse purposes, would, therefore, be considered commercial mobile systems.

The Commission asks how commercial and private mobile services will co-exist on common frequencies, assuming that some current private systems are reclassified as commercial mobile service providers. The Commission need only establish compatible co-channel protection criteria between the services to ensure co-existence. Regulatory treatment need not be frequency specific. Instead, if channels are available to different categories of users, the regulatory treatment should apply to the entity providing service.

Existing Common Carrier Services-E.F. Johnson agrees that existing common carrier mobile services that meet the functional criteria established by the Commission should be accorded status as commercial mobile service providers. It recognizes that there will likely be current common carriers who, because they do not meet that functionality test, will not

^{2/} NPRM, at paragraph 36.

be so characterized. Nevertheless, because it believes that like services should be accorded similar regulatory treatment, it is appropriate to regulate these entities as private services.

The Commission asks whether it should amend its rules to allow existing common carriers who are classified as commercial mobile services to provide dispatch service in the future. E.F. Johnson strongly opposes the provision of dispatch service by commercial mobile service providers, regardless of whether they are now common carriers or they are current private radio licensees.

Traditional SMR systems provide low cost dispatch (and in some cases interconnect) service to industrial and commercial users. When the FCC created the SMR service, it did so to satisfy the needs of entities that had communications requirements, but could not afford the infrastructure for their own communications systems. There continues to be a growing demand for low cost, reliable dispatch communications to satisfy these entities' requirements.

Because commercial mobile service providers, as E.F. Johnson recommends definition of the term, will have substantially greater spectrum, and likely greater resources than traditional SMR providers, they will be able to exercise market power over traditional operators. As an initial matter, they will be able to employ excess capacity to underprice traditional SMR systems. Because of their unfair competitive position, these commercial mobile service providers will be able to drive traditional SMR operators from the marketplace.

Nevertheless, over time, commercial mobile service providers will increasingly employ their spectrum for mobile telephone operations. The preference for mobile telephone

customers is a function of the rational selection of providing service that will command the highest possible rates. Because mobile telephone customers pay an average rate higher than dispatch users^{10/}, commercial mobile service providers will increase their dispatch rates to those equal to mobile telephone charges. The result will be the elimination of the traditional SMR operator, which would deprive the public of the opportunity to use these valuable specialized services.

The reasoning stated above will apply to not only cellular operators, but to those SMR providers that will be characterized in the future as commercial mobile service providers. Accordingly, E.F. Johnson recommends that, after the three year "grandfathering" period specified in the Act, when existing private radio systems that are characterized as commercial mobile service providers are regulated as common carriers, all commercial mobile providers be banned from offering dispatch services.

This result is consistent with Congressional intent that like services be regulated in a consistent fashion. Once the Commission determines the functionality indicia for commercial mobile service systems, there will be no reason to subject these entities to different regulatory structures. Accordingly, all systems that employ frequency reuse that otherwise comply with the statutory definitions should be prohibited from offering dispatch service. To permit these entities to provide dispatch services will lead to the ultimate demise of the small SMR provider, which offers low cost dispatch service on a local basis, a service recognized as valuable by the Commission and the marketplace.

^{10/} Economic and Management Consultants International, Inc., "The State of SMR and Emerging Private Radio Markets: 1992-1993. ¶ 8.2.1 (December, 1992).

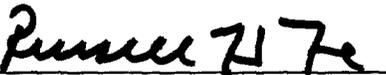
III. CONCLUSIONS

Changing marketplace conditions have correctly prompted Congress to direct the Commission to reevaluate the regulatory structure for mobile communications service providers. E.F. Johnson agrees that in this reregulatory process, like services should be subject to similar treatment. The determination of "like" commercial mobile services should be based upon a functionality test, as suggested by the Act. All providers that are subsequently regulated as commercial mobile licensees should be prohibited from offering dispatch service. If unchecked, these entities will drive current dispatch providers from the marketplace, eliminating a valuable option for the mobile communications consumer.

WHEREFORE, THE PREMISES CONSIDERED, the E.F. Johnson Company hereby submits the foregoing Comments and urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

THE E.F. JOHNSON COMPANY

By: 

Russell H. Fox

Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7100

Its Attorneys

Dated: November 8, 1993

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