

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
)
Implementation of Sections 3(n))
and 332 of the Communications Act)
)
Regulatory Treatment of)
Mobile Services)

GN Docket No. 93-252

COMMENTS OF SUNCOM MOBILE AND DATA, INC.

SunCom Mobile and Data, Inc. ("SunCom"), by its attorneys, hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking in the captioned rulemaking proceeding.^{1/} In its Further Notice, the Commission addresses a host of issues generally associated with regulatory parity. SunCom's comments focus on a single component of the Commission's regulatory agenda: The treatment of 220 MHz narrowband systems.

For the reasons set forth below, SunCom submits that 220 MHz narrowband systems are substantially similar to other mobile service systems and must be afforded an opportunity to compete with them on a level playing field. Accordingly, SunCom supports all Commission proposals in the Further Notice that provide for parallel regulatory treatment of 220 MHz licenses and other providers of mobile service.

I. Background

Nearly five months ago SunCom presented to the Commission a request for waiver of Section 90.725 of the Commission's rules

^{1/} Further Notice of Proposed Rulemaking in General Docket 93-252, FCC 94-100, released May 20, 1994, 59 Fed. Reg. 28042 (1994) ("Further Notice").

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proposing an extended construction period in order to permit implementation of a commercial, trunked 220 MHz narrowband mobile radio service system in most of the top 75 metropolitan statistical areas, as well as in certain areas with sufficient projected potential for such operation. SunCom also sought permission to aggregate non-nationwide 220 MHz five-channel blocks on a regional basis so that it may provide multiple market service on a single system.

In presenting its requests, SunCom demonstrated that it sought to compete in the provision of Commercial Mobile Radio Service and sought such relief as is necessary in order to permit 220 MHz licensees to compete with mobile service providers. SunCom also demonstrated that the relief it sought is consistent with that afforded to many SMR applicants and operators in the 800 MHz and 900 MHz bands. Finally, SunCom pointed out to the Commission that its proposal obviates the need for the comprehensive, long-term management agreements pursuant to which many SMR operators "build and operate" their systems only with the financial, technical and operational assistance of third parties who often obtain both significant percentages of system profits and rights to eventually acquire the systems at issue. See, generally, SunCom's Request for Waiver and associated request for Section 90.739 relief.

The staff has not yet acted on SunCom's requests. Rather, nearly four months after the requests were filed, the Commission

invited comment on them by including them in the Commission's Further Notice.^{2/}

II. SunCom's Revised Proposal

Reference to SunCom's proposal in the Commission's Further Notice has generated considerable discussion between SunCom and other parties in the industry. For the most part, these discussions involved trade associations or entities that either seek to compete with SunCom or to profit from the sale of equipment. Not surprisingly, many of these entities took issue with components of SunCom's request, at least to the extent that grant of the SunCom proposal would present them with added competition or possibly with reduced profits.

After extensive discussion with multiple other entities, and in an effort to side-step extended controversy to the extent possible, SunCom has determined to revise its request for waiver. The revised request will have the following parameters:

Modified Construction Schedule. SunCom proposes to reduce its construction schedule from eight to five years with benchmarks as follows:

<u>Year</u>	<u>Percentage of Markets Constructed</u>
1.5 years	20%
2.5 years	40%
3.5 years	75%
5.0 years	100%

^{2/} See Further Notice at para. 38.

To meet these benchmarks, SunCom proposes to construct, (1) the lesser of three licenses (15 channels) or all of the channels under its management in each of its markets in the top 75 MSAs, and (2) the lesser of two licenses (10 channels) or all of the channels under its management in MSAs 76 and beyond. SunCom believes that a market construction benchmark is superior to a channel benchmark because it will encourage aggregation and implementation on a rational and economically feasible basis. A bare 20% channel construction benchmark could result in a haphazard and poorly planned service offering.

SunCom's schedule is far more aggressive than the Commission's rules provide for nationwide licensees, more aggressive than SunCom originally proposed, and is comparable to that afforded to wide-area ESMR networks. SunCom estimates that it will be successful in contracting to construct and manage 500 5-channel licenses. Thus, it would build 100 5-channel base stations (500 channels) and spend roughly \$10 million to \$15 million in capital investment within the first 18 months. For reasons generally described in its two requests, a construction schedule of less than five years will not result in prudent, commercially reasonable system development.

Limitation on the Assignability of its Authorization. SunCom proposes to limit its ability to assign its network authorization^{3/} until its 20% benchmark is met. By that stage,

^{3/} SunCom notes that licensees joining its system are committed to a successful long term business plan. These parties pledge their authorization into SunCom in exchange for a small piece
(continued...)

SunCom will have millions of dollars invested in its system and the full network design will be in place. This proposal goes farther than cellular or ESMR requirements and SunCom believes it will strengthen the industry by limiting this opportunity to those who wish to build and operate systems as opposed to those who may wish to flip licenses without constructing any facilities.

SunCom appreciates the many and varied interests of the parties who have expressed interest in SunCom's proposal. Yet SunCom believes that the driving force should be what is in the best interest of the public at large. Accordingly, as SunCom wrestled with how best to revise its proposal it has sought to streamline its proposal to the maximum extent possible, while maintaining the core attributes necessary in order to permit competitive service with other mobile carriers.

III. Conclusion

SunCom applauds the Commission's efforts in its Further Notice to establish a level playing field upon which all carriers can compete fairly. It was this same goal that led SunCom to present its requests to the Commission.

While SunCom understands why the Commission elected to incorporate its requests into the formal record in this proceeding,

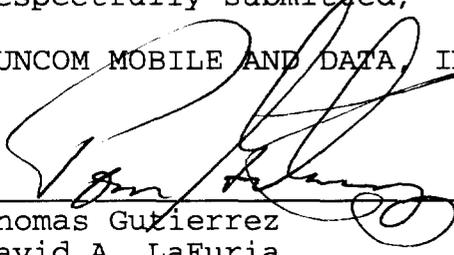
^{3/} (...continued)

of equity in the total network. They cannot "cash out" early, simply because SunCom has a first option to purchase their authorization at the time it is constructed and even at that time licensees will receive SunCom stock which, will probably not be publicly traded until several years after initial network construction.

SunCom submits that the two need not be irrevocably intertwined. In particular, SunCom is concerned that, unless its request can be acted upon outside of the Further Notice, it may be impossible for it to achieve the benefits sought therein.

Respectfully submitted,

SUNCOM MOBILE AND DATA, INC.

By: 

Thomas Gutierrez
David A. LaFuria

Its Attorneys

Lukas, McGowan, Nace &
Gutierrez, Chartered
1819 H Street, N.W., 7th Floor
Washington, D.C. 20006
(202) 857-3500

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