LAW OFFICES OF
WILLIAM J. FRANKLIN,
CHARTERED

1919 PENNSYLVANIA AVENUE, N.W.
SUITE 300
WASHINGTON, D.C. 20006-3404

(202) 736-2233
TELECOPIER (202) 452-8757
AND (202) 223-6739

ORIGINAL

June 20, 1994

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

Via Messenger

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

Dear Mr. Caton:

Submitted herewith on behalf of Simrom, Inc. are an original plus ten (10) copies of its Comments with respect to the above-referenced docket.

Kindly contact my office directly with any questions concerning this submission.

Respectfully submitted,

William J. Franklin
Attorney for Simrom, Inc.

Encs.
cc: Simrom, Inc.

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

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 SIMROM, INC.

William J. Franklin, Esq.
WILLIAM J. FRANKLIN, CHARTERED
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, D.C. 20006-3404
(202) 736-2233
(202) 452-8757 Telecopier

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SUMMARY OF COMMENTS

Simrom, Inc. ("Simrom") and its principals now hold authorizations for, or have contractual responsibility to construct and operate, several hundred local 220 MHz systems in over 60 markets nationwide. Some of these systems are now operational. Accordingly, Simrom is uniquely qualified to comment on the Commission's proposed regulatory treatment of 220 MHz Local licensees.

I

The 220 MHz communications services have unique regulatory requirements which must be addressed in this proceeding. Unlike the 800 MHz and 900 MHz services, the 220 MHz services is an infant service, only now emerging from its regulatory incubation. Unlike the 800 MHz and 900 MHz services, the 220 MHz services face substantial technical limitations. The paired 220 MHz channels are likely to be unattractive for interconnected, two-way voice communications.

II

Interconnected 220 MHz CMRS service is substantially similar to narrowband PCS service, but not to any Part 22 mobile service. Area-based licenses for narrowband PCS do not presently provide a relevant role model for the site-based local 220 MHz licenses. In certain circumstances, regulatory techniques found helpful in Part 22 and elsewhere in Part 90 of the Rules should be applied to 220 MHz CMRS service.

III

Because of the regulatory economies and licensee flexibility inherent in area-based licensing, the Commission should adopt an area-based licensing system for 220 MHz CMRS.

The Commission should repeal Section 90.739 (the ownership limitation for 220 MHz systems) or (at the minimum) conform it to the ownership limitation for narrowband PCS systems. Subject to minor disagreements, Simrom supports the SunCom Petition.

IV

The 220 MHz technical rules should remain unchanged. Within the 220 MHz band, Simrom favors the long-term goal of inter-operability over a five-year transition period, but not at the immediate expense of freezing development of the industry.

V

For the construction deadlines of 220 MHz CMRS systems, the Commission should take three important actions: It should adopt an extended implementation-schedule alternative for complex 220 MHz systems, similar to that now available to other services and as requested by SunCom. Unless the Commission acts on the SunCom Request for Waiver on or before its August 10, 1994, deadline for this rulemaking, it should grant an interim waiver of Section 90.725(f) to SunCom and similarly situated entities, including Simrom, until it can take final action.

If the Commission extends the CMRS construction period from 8 to 12 months, it should extend the 220 MHz construction deadline accordingly. It should also extend the construction dead-

lines indefinitely for 220 MHz systems north of Line A until the U.S.-Canadian negotiations complete.

VI

For 220 MHz CMRS systems, the Commission should make sure that the filing window for 220 MHz modification applications opens before the filing window for new 220 MHz systems. Modification applications should be accepted expeditiously, i.e., well before the current December 4, 1994, construction deadline.

The Commission should adopt a reasonable, technically justifiable standard for determining when an additional proposed location is a new station, rather than a modification. For determining when an application proposes to modify a license, the Commission should compare the distance between the existing and proposed stations against the maximum service contour of the radio service in question. Stations which are operated by licensees under substantially common ownership or as part of an integrated communications system are deemed to belong to "the same licensee" for the purpose of determining when an application proposes a license modification.

Local 220 MHz stations operating pursuant to an STA should be able to file modification applications based on the location of the STA.

VII

For local 220 MHz systems, the Commission should apply the transfer and assignment policies now appearing in Section 22.40(a) of the Rules. For nationwide 220 MHz systems, the

Commission should generally adopt the policies now appearing in Section 22.40(b)(1) for unserved-area cellular systems. The Commission should freely permit pro forma or involuntary transfers or assignments at any time, as well as the specific transactions listed in Section 22.922(a).

VIII

At present, the arbitrary and accidental division of 220 MHz licenses into two groups (i.e., those subject, and those not subject, to the 3-year transition period for CMRS regulation) works a hardship.

The Commission should exercise its broad power to modify licenses to permit 220 MHz SMR licensees to request that their licenses be modified to contain a grant date of August 9, 1993. Upon the grant of this request, the requesting licensee would be regulated under the 3-year transition rule for private-radio CMRS licensees.

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To: The Commission

COMMENTS OF SIMROM, INC.

Simrom, Inc. ("Simrom"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, hereby files comments with respect to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] Simrom's comments are focused on the Commission's regulatory treatment of 220 MHz licensees, and issues ancillary thereto. As to 220 MHz licensees, Simrom urges the Commission to be sensitive to the specific technical, economic, and regulatory constraints of this developing service, and to adopt rules which will facilitate the orderly development of 220 MHz SMR service on a local, regional, and national basis.

DESCRIPTION OF SIMROM

Simrom is a communications construction and management firm which specializes in the funding, construction, management, and operation of 220 MHz systems. Simrom is a joint venture between

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[1/] 9 FCC Rcd ____ (FCC 94-100, released May 20, 1994) ("FNPRM").

Simmonds Communications Ltd. ("Simmonds") and Roamer One, Inc. ("Roamer"). Simrom envisions developing regional networks joining local 220 MHz systems together to form a seamless coverage area in sectors that would eventually be joined in a nationwide grid of service zones that would be known as the Roamer Network.

Simmonds is in the business of, and has extensive experience in, the distribution of two-way radio products and value-added integration of two-way radio systems, including the design, engineering, installation and servicing of sophisticated two-way radio network communication systems. Its wholly owned subsidiary, Midland Radio, Inc. is a manufacturer and distributor of subscriber radio units used for SMR service.

The principals of Roamer now hold approximately 100 authorizations for 220 MHz commercial, 5-channel systems in 95 markets nationwide and have contracted with Simrom to manage those systems. Pursuant to various management agreements, Simrom has the responsibility to construct, manage, and operate approximately 200 additional 220 MHz systems in about 60 markets under the ultimate direction and control of their respective licensees.

In support of these efforts, Simrom now has contracts with Uniden, Inc. and SEA, Inc. to purchase 220 MHz 5-channel base stations for these licensees and their systems. Simrom has also begun the installation and operation of these systems pursuant to its management contracts. With this extensive practical experience and knowledge of the SMR industry and 220 MHz technology,

Simrom has a unique perspective from which to comment on the Commission's proposed regulatory treatment of 220 MHz licensees.

COMMENTS

I. BECAUSE OF THEIR AS-YET-UNDEVELOPED NATURE AND CERTAIN TECHNICAL LIMITATIONS, THE 220 MHz SERVICES NEED A SENSITIVE REGULATORY TREATMENT WHICH RECOGNIZES THEIR SPECIAL NATURE.

Despite being substantially similar to narrowband PCS,[2/] the 220 MHz communications services have unique regulatory requirements which must be addressed in this proceeding. The 220 MHz services is an infant service, only now emerging from its regulatory incubation.[3/] At present the Commission has a freeze on additional 220 MHz applications, thus preventing the relocation or expansion of authorized 220 MHz systems or the development of additional systems in unlicensed areas.

For these reasons, at most only a handful of 220 MHz licensees are now operational. No community of demand for 220 MHz radio services is commonly recognized. Indeed, the FNPRM recognizes that:

> Because licensing of the [220 MHz] band only commenced in 1993 and most systems are not yet constructed,[30] it is difficult to assess whether commercial 220 MHz licensees

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[2/] See Comments, Part II, infra pages 5-7.

[3/] The Commission held its lottery for 5-channel 220 MHz Commercial Nationwide systems on March 31, 1993, but has not yet issued licenses to all the lottery winners. The Commission held its lottery for 5-channel 220 MHz Local systems on October 19, 1992, and has issued most of those licenses. The Commission has not yet designated tentative selectees or issued licenses for the 10-channel 220 MHz Nationwide Commercial systems or for the 220 MHz Noncommercial Nationwide systems.

will in fact provide service that is similar to any Part 22 service.

[30] Because of uncertainty created by a judicial appeal of our filing procedures for 220 MHz applications, which was recently dismissed, all 220 MHz non-nationwide licensees have been granted an extension until December 4, 1994, to construct their systems and commence operation. See Order, PR Docket No. 89-552, DA 94-276 (adopted March 28, 1994; released March 30, 1994).[4/]

Unlike the existing 800 MHz and 900 MHz CMRS services, the 220 MHz services face substantial technical limitations. The 220 MHz allocation is extremely narrow-band (5 KHz channelization), as compared with 25 KHz channels at 800 MHz and 12.5 KHz channels at 900 MHz. This narrow 220 MHz channelization renders its equipment difficult to develop and expensive to manufacture. Both base-station and user equipment to operate at 220 MHz is not in wide-spread distribution or achieving economies of scale in its manufacture.

Although all three SMR bands are licensed with paired channels, at present the spacing between the paired 220 MHz channels forces voice operations to operate on the CB-style, simplex "push-to-talk" mode of operation. Thus, in the foreseeable future 220 MHz systems are likely to be unattractive for interconnected, two-way voice communications, and not viable competitors for 800 MHz or 900 MHz SMR mobile-telephone services,

[4/] FNPRM, ¶17 & n.30 (footnote in original). In the Competitive Bidding Notice of Proposed Rulemaking, the Commission recognized "the uncertainty with respect to how 220 MHz Local licensees will actually conduct their businesses...." Competitive Bidding, 8 FCC Rcd 7635, 7657 n.123 (1993) (Notice of Proposed Rule Making).

800 MHz ESMR services, cellular, or anticipated broadband PCS services.

These differences (which substantially result from the Commission's 220 MHz regulations) render 220 MHz authorizations substantially different from the existing 800 MHz and 900 MHz authorizations. Accordingly, in this proceeding the Commission must recognize those differences in carefully crafting a regulatory treatment appropriate for the specific nature of the 220 MHz radio services.

II. THE COMMISSION SHOULD DETERMINE THAT COMMERCIAL, INTERCONNECTED 220 MHz SMR SERVICE IS SUBSTANTIALLY SIMILAR TO NARROWBAND PCS SERVICE, BOTH LOCALLY AND NATIONALLY.

Paragraph 17 of the FNPRM requests comment on whether interconnected 220 MHz CMRS service is substantially similar to either any Part 22 mobile service or narrowband PCS service. Based on its knowledge of the 220 MHz technology and industry, Simrom believes that interconnected 220 MHz CMRS service is substantially similar to narrowband PCS service, but not to any Part 22 mobile service.

Part 22 mobile services include paging (in three frequency band), traditional IMTS two-way service (in two frequency bands), cellular service, air-ground service (in two frequency bands), and certain specialized services which are not relevant here. Obviously, interconnected 220 MHz CMRS service is not substantially similar to cellular service, air-ground service, and the specialized Part 22 services, and those services may be dismissed from consideration.

Nor is interconnected 220 MHz CMRS service substantially similar to traditional IMTS two-way service. This service, which has faded from widespread use with the development of cellular and 800 MHz SMR, offers wideband, analog, voice-only mobile telephone service from a limited number of non-interconnected locations and channels per system.[5] The service has none of the likely service characteristics of 220 MHz service.

Thus, interconnected service can only be substantially similar to either Part-22 paging or to narrowband PCS, which (after all) is viewed as the next generation of paging service. All three services (220 MHz, paging, and narrowband PCS) use digital communications over relatively narrow bandwidths and have (in some fashion) local, regional, and nationwide licensing. The regional licensing for paging and 220 MHz service is not a Commission action, but grew (or for 220 MHz, likely will grow) from private efforts to amalgamate local licenses into a regional network.

The 220 MHz service is more similar to narrowband PCS than to paging. Narrowband PCS (like 220 MHz and unlike paging) has the capability for two-way communications. Also, the five 5-KHz paired channels for each SMR system more closely resemble in capacity and capability the paired narrowband PCS licensing structure than the single, one-way paging channel.

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[5] The IMTS service has a total of 18 VHF and 26 UHF channels, most of which are being used for paging. In fact, IMTS service is of such limited utility for most of the country and so technically obsolete that the Commission might well consider it substantially similar to nothing.

Further, narrowband PCS, like 220 MHz, is a newly created service without any substantial existing investments by carriers and subscribers. Simrom views its development of 220 MHz CMRS service as a race for mobile digital/data customers with narrowband PCS, with paging carriers providing a generally non-competing service.

Narrowband PCS also represents the Commission's latest thinking regarding the proper licensing of mobile service, i.e., using the BTA/MTA/regional/national area-based licensing model. If the Commission is going to tailor its 220 MHz licensing after any other CMRS service, it should base its 220 MHz regulation on the latest available thinking, and not the regulatory approach of the 1970's and before.[6/]

For these reasons, Simrom urges the Commission to find that interconnected 220 MHz CMRS service is substantially similar only to narrowband PCS service. However, the Commission needs to recognize that the area-based licenses for narrowband PCS do not presently provide a relevant role model for the site-based local 220 MHz licenses. Further, as a brand new service, narrowband PCS does not afford the Commission the depth of regulatory experience of existing Part-22 and Part-90 services. In certain circumstances as set forth herein, regulatory techniques found helpful in Part 22 and elsewhere in Part 90 of the Rules should be applied to 220 MHz CMRS service.

[6/] In Part II of these Comments, Simrom proposes a PCS-like channel assignment plan for 220 MHz CMRS service.

III. THE COMMISSION SHOULD PERMIT REGIONAL LICENSING AND CHANNEL AGGREGATION FOR 220 MHz SMR CHANNELS.

Paragraph 38 of the FNPRM requests comment on the proper channel assignment plan for 220 MHz CMRS systems. Once the Commission concludes that 220 MHz CMRS service is substantially similar to narrowband PCS, it should move expeditiously to adopt a PCS-like, area-based licensing system. Moreover, because of the regulatory economies and licensee flexibility inherent in area-based licensing, the Commission should adopt an area-based licensing system for 220 MHz CMRS in any event. Further, the Commission should repeal Section 90.739 (the ownership limitation for 220 MHz systems) or (at the minimum) conform it to the ownership limitation for narrowband PCS systems.

Area-Based Licensing. Conversion of existing 220 MHz licenses to PCS-like area-based authorizations can readily be done after the expiration of the construction deadline for initial 220 MHz local licenses and purging from the Commission's database of unconstructed systems, and before the acceptance of an additional set of initial applications. At that time, licensees of constructed 220 MHz systems could request BTA-wide, MTA-wide, regional, or nationwide authorizations, using much the same procedures that the Commission applied in converting 900 MHz Private Carrier Paging systems to exclusive licenses or will adopt for the licensing of regional ESMR systems. Multiple licensees requesting the same frequency and area each would be given the option to change to an available frequency or accept co-primary grandfathered status within their authorized area.

SunCom Petition. The Commission also requested comments on the Petition for Declaratory Ruling filed by SunCom Mobile & Data, Inc. ("SunCom Petition").[7] In this Petition SunCom seeks a Commission determination that its proposed post-construction acquisition of multiple, local 5-channel 220 MHz CMRS systems within a single market is consistent with Section 90.739 of the Commission's Rules.[8].

Simrom supports the relief requested by SunCom, and suggests that it forms a valid basis for assisting the development of the 220 MHz CMRS industry.[9]

Section 90.739. The license limitations contained in Section 90.739 served a valuable regulatory purpose during the initial licensing of 220 MHz systems, by preventing applicants from skewing the Commission's lottery procedures. However, those purposes have evaporated now that the initial 220 MHz licenses have been granted. Further, as the Commission likely moves to

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[7] SunCom has also filed a Request for Waiver of Section 90.725(f) of the Rules, seeking an extended implementation schedule for its proposed network of 220 MHz systems. We discuss (and support) that Request for Waiver in Comments, Part V, infra pages 12-17.

[8] Section 90.739 states generally that no entity can hold more than one 220 MHz license of each type within a 40-mile radius, unless justified by its communications requirements.

[9] Simrom differs with SunCom's assessment that no stand-alone 5-channel 220 MHz system can be viable. The Commission should reject SunCom's "one big size fits all" notion just as SunCom has rejected the Commission's "one small size fits all" doctrine. In Simrom's view, the demand characteristics at the licensed location will determine the viability of each system.

auctions for additional new 220 MHz licenses, Section 90.739 serves no useful purpose at all.

The Commission should repeal Section 90.739, and allow applicants to acquire 220 MHz licenses by auction or assignment as their finances and business judgment dictate. This would bring the Commission's 220 MHz regulations into line with Part 22 CMRS practice, which imposes no limits on licensed channel capacity (although new paging applications are subject to a one-at-a-time rule). Similarly, this would bring the 220 MHz CMRS rules more into line with the narrowband PCS rules, which currently limit licensees to a maximum of 300 MHz per geographic area.[10/]

IV. THE COMMISSION SHOULD MAKE ONLY MINOR CHANGES TO THE 220 MHz TECHNICAL RULES.

Paragraphs 39-57 of the FNPRM request comment on potential changes to various technical rules for 220 MHz CMRS operations. Simrom generally supports those proposals, which should be band-specific rather than service-specific.

In response to paragraph 51 of the FNPRM, the 220 MHz technical rules should remain unchanged. The 220 MHz licensees and managers have planned their system coverage on the basis of the existing height and power limits. The coverage which results from those rules is one substantial positive for the 220 MHz

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[10/] If the Commission wishes to place limits on 220 MHz CMRS channel acquisition, it should adopt the same limits as now apply to narrowband PCS, i.e., 300 MHz (60 5-KHz channels) per market area subject to a 5% floor for attribution, or such more liberal standards as are adopted in this proceeding.

rules, which offsets its narrow channelization and limited aggregate capacity of the band.

The area-licensed systems of narrowband PCS (from a substantially different frequency band) do not provide any meaningful guidance for the 220 MHz limits. In fact, to the extent that 220 MHz systems are deemed similar to Part 22 systems in the adjacent 150 MHz band, the height limit for 220 MHz should be raised from 150 meters to 305 meters, keeping the common ERP limit of 500 watts.

In Paragraphs 56 and 57, the Commission requests comments on interoperability, either between services or within services. Simrom opposes any interoperability between services. By design, different services have different functions and capabilities. This serves the public interest by providing diversity in communications services and equipment. Inter-service interoperability could well raise equipment costs substantially and reduce service and equipment offerings to the lowest common denominator.

Within the 220 MHz band, however, Simrom favors the long-term goal of interoperability, but not at the immediate expense of freezing development of the industry. As the cellular experience shows (as compared with the 800-MHz SMR industry), intra-service equipment interoperability services the public interest by permitting manufacturing economies of scale and the widest range of service availability.

Simrom would favor the Commission establishing a long-term (say, 5-year) deadline after which the Commission would not type-

accept non-interoperable 220 MHz equipment. Five years is sufficient time for the initial round of 220 MHz equipment to be developed, sold, used, and written off. Similarly, five years will allow the industry sufficient time to adopt a common air interface, develop advanced radio equipment, and begin its commercial roll-out.

V. THE COMMISSION SHOULD APPLY THE 800 MHz EXTENDED IMPLEMENTATION RULES TO COMPLEX 220 MHz SYSTEMS; OTHER CHANGES TO THE CONSTRUCTION DEADLINES FOR 220 MHz SYSTEMS ARE REQUIRED.

Paragraphs 59-66 of the FNPRM request comment on the proper construction periods and coverage requirements for CMRS systems. For 220 MHz CMRS systems, the Commission should take three important actions: (1) Adopt an extended implementation-schedule alternative for complex 220 MHz systems; (2) If it extends the CMRS construction period from 8 to 12 months, extend the 220 MHz construction deadline accordingly; and (3) Grant special relief for 220 MHz systems north of Line A.

Extended 220 MHz Implementation. As noted above, SunCom accompanied its Petition with a concurrently-filed Request for Waiver of Section 90.725(f) of the Rules, seeking an extended implementation schedule for its proposed network of 220 MHz systems.[11] In that Request, SunCom proposes that it be permitted to construct its 220 MHz network in stages over an eight-year

[11] Section 90.725(f) requires that local 220 MHz licensees construct their systems within 8 months of grant, unless otherwise extended.

period, using rules derived from the Commission's nationwide 220 MHz construction schedule (Section 90.725(d)).

SunCom is correct in suggesting that 220 MHz licensees need the ability to qualify for extended implementation schedules. Currently, the Commission permits extended implementation schedules for nationwide 220 MHz systems,[12] integrated 800 MHz and 900 MHz SMR systems,[13] multi-transmitter paging systems,[14] ESMR Systems,[15] cellular systems,[16] 800 MHz air-ground systems,[17] and all PCS systems.[18] The Commission did this in each case because it recognized that complex, technically advanced, multi-site communications systems require careful design and extensive construction efforts before they are completed.[19] Those policies directly apply to complex 220 MHz systems, such as SunCom and Simrom propose.

Thus, SunCom correctly has proposed extended implementation rules for 220 MHz CMRS systems, and Simrom supports this propos-

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[12] Section 90.725(f) of the Rules.

[13] Section 90.629 of the Commission's Rules.

[14] Section 90.496 of the Commission's Rules.

[15] See, e.g., Fleet Call, Inc., 6 FCC Rcd 1533 (1991), and subsequent ESMR decisions.

[16] Pursuant to Section 22.43(c) of the Commission's Rules, initial (i.e., non-unserved-area) cellular systems have three years to complete construction.

[17] Section 22.43(e) of the Commission's Rules.

[18] Section 99.206 of the Commission's Rules.

[19] See generally, FNPRM, ¶¶60, 64-66.

al. Indeed, Section 332 of the Communications Act, as amended by the 1993 Budget Act, requires that 220 MHz CMRS licensees be accorded similar treatment as to their extended implementation plans.

However, Simrom rejects the SunCom notion that a single licensee must own the entire regional system in order to qualify for extended implementation. The existing SMR industry (at 800 MHz, 900 MHz, and 220 MHz) commonly creates networks of separately owned but commonly managed systems. This practice leads to spectrum economies and advanced service to the public. There is no reason to single out 220 MHz CMRS licensees for a different treatment. Thus, as SunCom tacitly recognizes,[20/] extended implementation should be available to commonly managed or commonly owned systems.

Finally, unless the Commission acts on the SunCom Request for Waiver on or before its August 10, 1994, deadline for this rulemaking, it should grant an interim waiver of Section 90.725(f) to SunCom and similarly situated entities, including Simrom, until it can take final action. The 220 MHz equipment manufacturers generally project a 3-to-4 month delay for quantity delivery of 220 MHz base station equipment. Given the existing December 4, 1994, construction deadline for local 220 MHz licens-

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[20/] Paradoxically, SunCom's concept that non-SunCom 220 MHz licensees will qualify for extended implementation when they become affiliated with SunCom, but that the systems will not be placed in SunCom's name until the completion of construction, in effect legitimizes the concept that commonly managed (but separately owned) systems can qualify for extended implementation.

ees,[21] such licensees must finalize their business plans in August or September 1994, either by constructing potentially unneeded stand-alone systems or by turning in their licenses. The Commission must take some immediate action on the SunCom Petition, so that the 220 MHz licensees know if extended construction as part of an integrated system is available to them as an alternative. Without an interim waiver, the Commission's delay in ruling on SunCom's Waiver Request will become the de facto, albeit unintended, decision on the Request.

220 MHz Construction Extension. Paragraph 62 of the FNPRM correctly proposes that the Commission extend the 8-month construction deadline for CMRS licensees now licensed under Part 90 to the 12-month deadline accorded to Part 22 licensees. Simrom supports that proposal.

However, as part of that action, the Commission should extend all currently unsatisfied Part 90 construction deadlines by 4 months. With respect to 220 MHz, the Commission has established a generic construction deadline of December 4, 1994.[22] The Commission adopted this extension to respond to the industry paralysis which had resulted from the appellate challenge to the Commission's 220 MHz licensing procedures, and selected the

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[21] Given the existing scarcity and development problems of 220 MHz equipment, it is also possible that licensees who have timely arranged for equipment ordering and delivery (but who cannot obtain commercially viable, operational 220 MHz equipment) will qualify for further extensions of the construction deadline in any event.

[22] See FNPRM, ¶17 n.30.

December 4 deadline as 8 months from its adoption of the extension. In fairness, if the CMRS construction deadline is extended by 4 months in this proceeding, the December 4, 1994, deadline should similarly be extended 4 months to April 4, 1995.

Line-A Relief for 220 MHz Licensees. Currently, 220 MHz licensees of systems located north of Line A (i.e., near the Canadian border) face a difficult dilemma. On the one hand, their authorization will terminate if they fail to construct their system by its construction deadline, which in most cases is December 4, 1994. On the other hand, because of continuing negotiations between the United States and Canadian governments over the proper use of 220 MHz spectrum near the border, their licenses are conditioned on the outcome of those negotiations, and their licenses could be substantially modified or made secondary to Canadian amateur operations in the 220 MHz band.

In other words, these licenses currently are required to spend substantial sums of money to preserve their licenses to comply with rules which can change in unknown, and possibly adverse or confiscatory, ways.[23/] Just as it has in similar

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[23/] This situation can only be compared to (and is unfair as) the Dean's punitive "double secret probation" in the movie Animal House.

situations,[24] the Commission should remedy this unfair situation.

Specifically, the Commission should grant an indefinite extension of the construction deadlines for all 220 MHz authorizations north of Line A until the U.S.-Canadian 220 MHz negotiations are concluded.

VI. THE COMMISSION SHOULD ACCEPT APPLICATIONS FOR MODIFICATION OF ADDITIONAL 220 MHz LICENSES PRIOR TO ACCEPTANCE OF NEW APPLICATIONS FOR INITIAL SYSTEMS; THE COMMISSION NEEDS TO RESHAPE ITS DEFINITION OF "MODIFICATION" TO CORRESPOND WITH CURRENT INDUSTRY AND COMMISSION PRACTICES.

Paragraphs 129-134 of the FNPRM request comment on the proper procedures for amending of CMRS applications and the modification of CMRS licenses. For 220 MHz CMRS systems, the Commission should make sure that the filing window for 220 MHz modification applications opens before the filing window for new 220 MHz systems. Further, the Commission should adopt a reasonable, technically justifiable standard for determining when an additional proposed location is a new station, rather than a modification.

220 MHz Modification Applications. At present, the Commission has a filing freeze on 220 MHz applications, and will not accept applications for either modifications to existing stations or new stations. This freeze has resulted in the Commission's

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[24] When faced with a similar problem involving the Mexican government and 900 MHz SMR licenses, the Commission prevented the current situation from occurring there by holding all 900 MHz SMR applications for sites near the Mexican border in a pending status until the U.S.-Mexican treaty for 900 MHz could be finalized.

routine issuance of Special Temporary Authority for the relocation of 220 MHz stations, in situations where the authorized location has become unavailable or unfeasible as a 220 MHz site.[25]

However, this reliance on 220 MHz STAs as the crude substitute for modification applications has an unfortunate side-effect: Many 220 MHz systems will be constructed without permanent authority for their actual transmitter site.[26] This means that the operational stations could lose their authorization -- and terminate service to the public -- if a third party obtains permanent authority to operate on the licensee's frequency within 70 miles of the location subject to the STA.

This license preemption and loss of service is most likely to occur if the Commission accepts applications for new 220 MHz facilities at the same time as it does for modifications to existing stations. Accordingly, the Commission should prevent injury to the public interest by accepting applications for modifications to 220 MHz stations prior to acceptance of applications for new stations. Further, modification applications should be accepted expeditiously, i.e., well before the current December 4, 1994, construction deadline.

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[25] Because this situation results from the Commission's freeze, it should maintain its current 220 MHz STA waiver policy (even to 220 MHz CMRS applications) until the freeze is lifted rather than apply the common-carrier standards for STA. See FNPRM, ¶¶135-138.

[26] The Private Radio Bureau has adopted a policy that construction at another location pursuant to STA will satisfy a station's construction requirement