

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)
)

GN Docket 93-252

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To: The Commission

COMMENTS ON PETITIONS FOR RECONSIDERATION

Linear Modulation Technology Limited ("LMT"), by its counsel and pursuant to Section 1.429 of the Commission's Rules hereby submits its Comments on the Petition For Reconsideration of the Third Report and Order, FCC 94-212 (September 23, 1994) in the above-captioned proceeding submitted by SunCom Mobile & Data, Inc. ("SunCom").

By its Petition, SunCom has requested reconsideration of the FCC's denial of its Requests for Declaratory Ruling and Rule Waiver. By the latter Request, SunCom sought a waiver of Section 90.725(f) of its Rules for additional time to construct and operate an extended area system in the 220 MHz band; by the former request, SunCom sought declaratory relief to remove uncertainty regarding compliance with Section 90.739 when multiple licenses for constructed systems were acquired in the same geographic area. In its Third Report and Order (at para. 184), the FCC deferred generally the issue of the permissibility of extended implementation systems in the 220 MHz band, such as that proposed by SunCom. The Commission, however, granted a

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short-term extension of the then December 2, 1994 construction deadline for 220 MHz local systems until April 4, 1995, reasoning that this extension would afford the 220 MHz licensees approximately the same 12 month construction period provided to all newly-licensed Commercial Mobile Radio Service ("CMRS") licensees (as measured from the dismissal of the appellate litigation, Evans v. FCC, challenging the validity of the FCC's lottery process pursuant to which the 220 MHz local licenses were awarded).

I. STATEMENT OF INTEREST

LMT is a wholly-owned subsidiary of the Securicor Group plc ("Securicor") a company chartered in the United Kingdom. Among its businesses, Securicor provides and operates trunked private mobile radio systems throughout the U.K. and for many years has fulfilled its internal land mobile communications needs of its large parcel delivery, cash-in-transit, security service and other fleets. In this capacity, Securicor has participated in the FCC's on-going PR Docket 92-235 concerning the refarming of the Private Land Mobile Radio bands below 512 MHz.¹ Securicor has been an active proponent of the development of emerging spectrally-efficient very narrowband ("VNBR") land mobile technologies and a frequent participant in matters before the Radiocommunications Agency ("RA") of the U.K.'s Department of Trade and Industry looking toward the establishment of standards

¹See Comments of Securicor PMR (May 28, 1993); Reply Comments of Securicor PMR (July 30, 1993); Supplement to Comments of Securicor PMR (September 8, 1993), PR Docket 92-235.

and rules to govern the migration of U.K. PMR systems from their existing 12.5 kHz channelization to VNBR 5 kHz channelization.

LMT has developed the Linear Modulation, or "LM," 5 kHz private mobile radio system that was described by Peter Hilton, Managing Director of LMT, during the FCC's May 6, 1993 roundtable discussion on the refarming initiative. See Letter of Richard Shibben, Chief, Land Mobile and Microwave Division, Private Radio Bureau (May 18, 1993) (Appendix A to these Comments). The LM system, which was type-accepted by the FCC in March 1994, uses the very latest digital processing and linear radio techniques to give superior voice quality together with, currently, 14.4 kb/s high speed data in a 5 kHz channel. The LM system meets the MPT 1376 U.K. specification for 5 kHz channelization.

With the view that multiple sources of supply will ensure the robustness of the 220 MHz equipment market and will maximize product diversity and availability, LMT has embarked upon a program to ensure the licensing, manufacturing and distribution of LM technology in the 220 MHz band in the U.S. LMT itself assembles and distributes 220 MHz LM equipment in the U.S., and has also licensed E.F. Johnson Co. for these purposes. LMT, in addition, is currently in discussions with other potential suppliers of 220 MHz LM products in the U.S. LMT has committed a significant amount of resources to ensuring the successful introduction of LM systems in the U.S.

II. EXTENSION OF THE APRIL 4, 1995 CONSTRUCTION DEADLINE WILL SERVE THE PUBLIC INTEREST

Pursuant to the Third Report and Order, all 220 MHz local licenses now have a construction deadline of April 4, 1995. The licenses for all systems that are not fully constructed and operational under the FCC's Rules will automatically cancel by operation of Section 90.725(f) of the Rules. Once reclaimed, these licenses could be the subject of new CMRS or PMRS applications, either of which potentially could be mutually exclusive with other new 220 MHz local applicants or with the modification requests of existing 220 MHz local licensees. The FCC has indicated that it will shortly commence a rule making to revise its 220 MHz service area and channel assignment rules (Third Report and Order at paras. 184 and 345) and to address generally the issue of 220 MHz extended implementation.

At the outset, LMT commends the FCC for its initiatives in promoting the use of very narrowband technologies, both in the 220 MHz band and in the PMRS bands that are the subject of the on-going refarming docket. In LMT's view (as well as that of many others), very narrowband technologies provide the key to solving many existing spectrum congestion problems, as well as to enhancing existing wireless communications services and introducing a host of new service options. Indeed, the FCC expressly recognized the benefits of very narrowband radio in its docket (PR Docket 89-552) allocating the 220 MHz band for use by 5 kHz technologies, such as LM. There, the Commission made clear

its intent that the 220 MHz band would be a test bed for the deployment of VNBR technologies in other bands. To this end, LMT shares the Commission's objective of ensuring the timely construction of VNBR systems in the 220 MHz band in the U.S. and has consistently advocated both here and abroad the expeditious deployment of VNBR systems.

As discussed herein, LMT now believes that the FCC's objective of promoting the expeditious and successful deployment of 5 kHz 220 MHz band systems will be better served by the grant of further time to construct to those 220 MHz licensees who have undertaken sincere steps toward construction as measured by the contracting for system construction and management, the ordering and purchase of system equipment, and similar actions.

As the FCC has recognized the 220 MHz market is an emerging market based upon state-of-the-art technology. There are several new entrants into the U.S. radio equipment markets as a result of the Commission's award of 5 kHz licenses in the 220 MHz band, including LMT. Unlike established manufacturers, new entrants must establish for the first time proper dealer and marketing distribution networks to ensure that potential customers are aware of their products as an option, service networks to ensure that, once purchased, their equipment may be maintained and repaired and other support systems (e.g., customer inquiry staff, accounting and legal support). These tasks require much time and much effort, including the employment and training of personnel (which, in turn, creates many new high pay,

high skill jobs).

For its part, LMT over the past year has made significant progress in establishing the necessary distribution and support networks to ensure the successful introduction of LM systems in the U.S., particularly through its relationship with E.F. Johnson. LMT, in addition, has established a U.S.-based assembly and test capability for 220 MHz LM product in Moorestown, New Jersey. The uncertainties associated with the FCC's licensing of the 220 MHz systems, including the Evans litigation, were, however, until March 1994, a significant factor inhibiting the investment in plant retooling and distribution and support networks. This, indeed, is recognized by the FCC in the Third Report and Order (at para. 184).

Since March 1994, LMT's efforts have been redoubled in an attempt to meet the construction deadlines established by the FCC. LMT now believes that it will be able to build out a significant number of 220 MHz LM systems by the April 4 deadline.² Despite its best efforts in this regard and with all available production capacity employed full time, LMT will not, however, be able to deliver and build out many of the purchase orders for approximately one thousand full systems that licensees

²Securicor has negotiated with SunCom for the supply of 220 MHz equipment to meet its needs in equipping the approximately 600 5 channel licenses that SunCom has under management and has indicated its openness to considering a wide range of business relationships between the parties. Securicor confirms that it has reserved equipment for early delivery to SunCom within its current production schedules detailed above.

or managers of 220 MHz systems have attempted to place with LMT.³

LMT, of course, is not privy to the business records of other manufacturers of 220 MHz equipment, but believes, to the best of its information, that every manufacturer with type-accepted 220 MHz equipment competing in the commercial marketplace is in a similar position.⁴ To the best of LMT's knowledge, less than ten percent of the almost four thousand licenses for 220 MHz local systems have been constructed, leaving approximately 3700 systems that must be constructed between today and April 4. Accordingly, LMT believes that even with all available manufacturers operating on three shifts until the April 4 deadline, there will be many 220 MHz licensees who, despite their best efforts, simply are unable to acquire working equipment to construct their systems by the deadline. In LMT's view, the cancellation of these licenses would work a significant inequity on licensees acting in good faith.

Beyond this, given the current posture of the 220 MHz equipment markets, the April 4 deadline virtually will ensure that the systems that are constructed are done so hastily with little time for testing or marketing prior to operation to

³These figures do not include any 220 MHz LM systems under production, or purchase orders held, by E.F. Johnson.

⁴On January 17, 1995, SEA, Inc. requested that the FCC extend the construction deadline until December 31, 1995 for all non-nationwide 220 MHz licensees that have placed an equipment order by a date certain. SEA confirmed there that it also holds more equipment orders than it can fulfill by the April 4 deadline. LMT will comment upon the SEA request in a further submission.

satisfy the "placed in operation" requirements of Section 90.725(f). Such construction on the major scale now required before April 4 will serve no one's interest.

Equipment manufacturers will not have adequate time or resources to ensure that properly-trained personnel install and test their systems; and, licensees and system managers will not have adequate time to familiarize themselves with the operating parameters of their systems. As a result, the potential customers of the 220 MHz systems may receive suboptimal system performance. In turn, these systems can be expected to suffer disproportionately high customer churn. The net impact may well be a significantly lower prospect of a successful rollout of VNBR technologies in the U.S., which is clearly contrary to the FCC's primary rationale in allocating the 220 MHz band.

Moreover, dislocation of many 220 MHz licensees after the April 4 deadline, coupled with the current regulatory uncertainty over when and how those licenses may be reissued will severely impair competition in the U.S. equipment markets. In particular, the reclaimed licenses, which now appear likely to comprise a very significant percentage of the 220 MHz markets absent further relief from the construction deadline, will not be reissued for some time after April 4 due to the scale of the looming reclamation and the scarcity of available FCC resources. Once reclaimed, the FCC must accept new applications, which will be done under rules that have not yet even been proposed, and award new licenses. The award of these new licenses will be

subject no doubt to litigation of the nature encountered in the Evans case, from either the displaced licensee, the disappointed applicant, or both. After finality of this litigation (and the expenditure of much of the FCC's resources), presumably following the Evans precedent, then (and only then) the one year construction deadline will begin to run. As a result, after April 4, it is likely to be at least two full years before any significant further activity can be expected in the U.S. 220 MHz markets.

Equipment manufacturers, like LMT, however, need continuity in their operations to ensure that their staffs can remain active and well-trained, their plants can be properly equipped and maintained and necessary expenditures in research and development to further diversify and improve product offerings can be committed. The current posture of the U.S. 220 MHz markets, with a "spike" expected until April 4 and no activity for non-nationwide systems for several years thereafter (except servicing those systems deployed prior to April 4), poses, in LMT's view, a real doubt concerning the ability of the U.S. 220 MHz market to provide for the needed continuity by equipment manufacturers.

In addition, LMT believes that the current posture of the 220 MHz market, with almost four thousand systems with the same construction deadline of April 4 is unprecedented in scope. The cellular rollout in the U.S., for example, occurred incrementally over a decade, thus providing the cellular

equipment manufacturers ample time to implement distribution and support networks, and provide adequate training to staff those networks.

Finally, the uncertainty arising from the current posture of the FCC's regulation of the 220 MHz band itself has stifled the availability of capital to 220 MHz licensees and managers, like SunCom, and thus unfavorably impacted the ability of the licensees to construct their systems. To this end, the FCC has deferred to a further rulemaking many issues, including the application of its regulations to aggregation proposals like SunCom's (Third Report and Order at para. 129), to the ability of existing 220 MHz licensees to modify their facilities (Third Report and Order at para. 363) and to further licensing of new 220 MHz facilities (Third Report and Order at para. 345). Accordingly, existing 220 MHz licensees today are uncertain of their ability to obtain additional channels to expand their systems if necessary, their ability to modify their licenses to accommodate market demand and, indeed, their ability to even retain their existing license if constructed pursuant to Special Temporary Authority.

For all these reasons, LMT urges the FCC to grant extensions of the April 4 construction deadline to those parties (including SunCom) that can demonstrate good faith and timely efforts toward construction of their systems.

**Respectfully submitted,
LINEAR MODULATION TECHNOLOGY LTD.**

By: 
Robert B. Kelly

KELLY & POVICH, P.C.
Suite 300
1101 30th St., N.W.
Washington, D.C. 20007
(202) 342-0460

ITS COUNSEL

January 20, 1995

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
May 18, 1993

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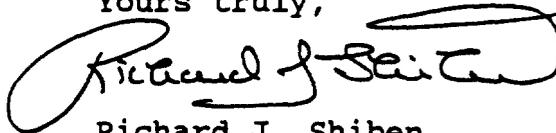
Peter Hilton
Managing Director
Securicor PMR Systems Limited
Cross Keys House, Block B
Westfield Industrial Estate
Midsomer Norton
Bath, Avon BA3 4BS
United Kingdom

Dear Mr. Hilton:

Thank you for taking time out of your busy schedule to speak at our roundtable discussion on May 6, 1993, on refarming the spectrum. Your participation helped assure the success of this important conference. The roundtable, as you know, was planned as a forum to discuss technologies that can be used to reform the private land mobile spectrum below 512 MHz. Our objectives for this conference were fully achieved, thanks in no small part to your participation.

Modifying and fine tuning the complex proposals contained in the refarming Notice of Proposed Rule Making will require a great deal of creativity, energy and cooperation in the coming months. It is exciting to hear about your efforts to advance the frontiers of two-way mobile technology and create products that meet the needs of the private land mobile radio community. As this docket proceeds, we encourage your continued participation and look forward to any additional input you can provide to help us in this effort.

Yours truly,



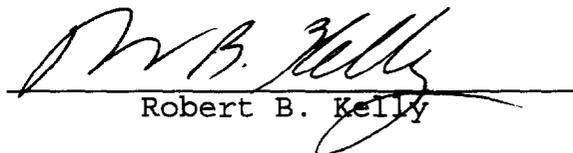
Richard J. Shiben
Chief, Land Mobile & Microwave
Division

CERTIFICATE OF SERVICE

I, Robert B. Kelly, hereby certify that a copy of the foregoing Comments on Petitions For Reconsideration was mailed, first class, U.S. mail, this 20th day of January, 1995, to the following parties:

Thomas Gutierrez, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th St., N.W.
Washington, D.C. 20036

Counsel for SunCom Mobile & Data, Inc.


Robert B. Kelly