ORIGINAL

RECEIVED

MAR - 1 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

DOCKET FILE COPY ORIGINAL

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030 RM-8029
	)	
and	)	
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS

Lagorio Communications ("Lagorio") by and through counsel hereby submits its comments on Reply in the above captioned proceeding and reiterates its earlier request that the Commission take those steps which are prudent and necessary to protect a vital portion of the telecommunications industry, the local analog SMR system.

Within its comments, Lagorio requested that the Commission take heed of the those comments filed on behalf of individual operators, rather than trade associations and other groups that might feign the existence of any unanimous consensus throughout the whole of the industry. It is now obvious that Lagorio's request was well made.

No. of Copies rec'd 0+4
List ABCDE

Since this proceeding began, manufacturers' representatives, legal representatives of PCIA, and persons representing AMTA have all attempted to arrive at an industry consensus. Each has been willing to compromise, either immediately or over a brief period, vital issues presented within the Commission's proposal. Most disturbing have been those proposals which have continued to suggest that some form of forced frequency reallocation be employed, either immediately or in the near term. These proposals are not supported by Lagorio and are also not supported by most of the commenting parties.[1] More particularly, these proposals are unsupported by those persons and entities whose businesses do not rely on the fortunes of Nextel Communications, Inc. ("Nextel"). Accordingly, the Commission may take official notice of the fact that the commenting parties fall into two general groups, those which rely or expect to rely on revenues from Nextel and those which are independent of Nextel's financial empire.

Although Lagorio does not seek to injure or impede Nextel's success, Lagorio must respectfully request that Nextel's future gains be made in accord with the present rules which apply to all operators on the SMR spectrum. Nextel's comments provide no basis for specialized treatment for Nextel or any entity which might leverage enormous financial resources to gain an advantage in the marketplace. Instead, all entities must enjoy a level playing field for future competition, for which the prime beneficiaries shall be the American public. The Commission should, therefore, insure the continued lively

---

[1] See, e.g. Comments of Triangle Communications, Inc.; Tom Luczak; T & K Communications Systems, Inc.; SMR Won; Applied Technology, Inc.; and Fresno Mobile Radio, Inc..

competition which has existed in the SMR marketplace due to the consistent efforts of independent operators like Lagorio. There can be and there has been no justification for limiting independent operators' opportunities to compete and grow.

The attempts at consensus have all failed because they seek to reduce the competitive opportunities for independent operators. They have further failed because they presuppose that the Commission has stopped caring about the fortunes of the independent telecommunications entrepreneur. Yet, Lagorio continues to have faith that the Commission will not turn its back on the small businesses which comprise most of the SMR industry, in favor of a handful of large entities. Such action would be contrary to the directions of the U.S. Congress which, even when it created the auction process, remembered that small businesses and minority-owned businesses must be allowed to thrive.

Regulatory Parity

It is ironic that much of the discourse about changing the rules for operation of SMR systems and the future process for maintaining or increasing spectrum has begun with the issue of regulatory parity. The proposals suggested in the Further Notice of Proposed Rule Making ("FNPRM") have been supported by a notion that adoption will create some form of parity for SMR operators as compared to cellular or PCS operators. With the exception of Nextel, no one has suggested that such parity is desirable,

necessary, or requested by the majority of the SMR industry. That Nextel has suggested that such parity is necessary to create a level competitive playing field is quite ironic.

Nextel has enjoyed a status within the SMR industry which belies any notion of parity. The waiver Nextel was granted a few years ago produced a regulatory advantage over other SMR operators which is unparalleled in the regulation of any portion of the industry. It is tantamount to allowing a broadcast entity to increase its effective radiated power by a hundred times and concurrently receive grant for the operation of a network of such stations. Nextel's success is a tribute to what might be accomplished by a company which is provided a distinct advantage over the other entities in the market -- an advantage which paved the way for imitators.

Now, the greatest beneficiary of this advantage seeks parity. But the parity sought is not with other SMR operators. It is not parity with other ESMR operators. Rather, it is parity with the regulation of cellular and PCS systems. That such parity is not required under the law has been well articulated in this proceeding, see, Comments of Triangle Communications, Inc. and Applied Technology, Inc.; and the price to be paid for achieving such parity has also been well documented, see, Comments of SMR Won. What has not been focused upon has been the fact that the parity sought will not benefit the whole of the SMR industry, but only a few of the operators with the resources to bid at auction and construct a fully integrated system throughout and within the arbitrary

advantages sought by the largest entities, yet who would be deemed successful employing any other yardstick, do not possess the resources to take advantage of the limited largesse sought by parity and will, instead, pay the price for such parity through loss of competitive opportunities, the cost of forced frequency reallocation, and the possible dismissal of nonconforming applications pending before the Commission.[2]

Lagorio respectfully requests that the Commission consider carefully the inevitable consequences of adoption of its proposals. The price of parity will be the crippling or the destruction of the independent analog operator. It will definitely curtail growth, raise costs, and limit the number of competing firms in the marketplace.[3] Lagorio does not believe that these consequences should be the outcome of the Commission's actions and implores the Commission to avoid these results by rejecting these proposals.

Conditions Precedent To Adoption

Within its earlier comments, Lagorio requested that the Commission set a logical and equitable threshold for adoption of the proposals. Following a review of the

---

[2] Lagorio has pending before the Commission an application to provide ESMR service in the State of California. Lagorio's application conforms with the existing rules, but there is grave doubt as to whether its application might be processed to grant if the proposals are adopted. Further, the proposals do not articulate the Commission's position on such pending applications and whether such systems will be authorized, allowed to be constructed, and allowed to compete in the marketplace.

[3] Competition will also be chilled in the manufacture of SMR equipment and attendant technologies. Accordingly, consumers will likely see the creation of de facto standards of technology at higher prices, with no competitive motivation to bring forth new and better technologies conformed to meet market demand.

comments filed in this proceeding, it is apparent that these conditions have not been met and cannot be met by supporters of these proposals. To refresh the Commission's memory, the suggested conditions were as follows:

(1) That the public will receive a service that is so necessary and compelling that adoption of the proposals is necessary to provide that service.

The Commission need look no further than Nextel's comments to determine whether this condition has been met. Nextel's comments speak little of its experience in the provision of ESMR service for which there is mounting evidence of a paucity of demand. Instead, Nextel focuses on the successes of the industry in providing millions of end users reliable dispatch services. It has been amply demonstrated through years of experience and data that those millions of end users have opted to purchase analog services because of the quality of service and cost of that service. Adoption of these proposals would certainly increase the cost of service to subscribers in both equipment and receipt of ESMR services, foisted upon an unwilling public. The Commission must, therefore, find that this logical condition has not been met by the supporters of these proposals.

(2) That operators of analog systems who might be forced to exchange or give up spectrum will be fully compensated for their losses.

A review of the economic study provided in the Comments of SMR Won provide evidence of the economic losses to be suffered by the analog operators.

However, the Commission may wish to focus exclusively on its own articulated method of compensation for reallocation which is "fully comparable alternative frequencies". No supporting party has demonstrated that such spectrum exists or is likely to be made available.[4] Certainly the Commission has not suggested a new allocation of spectrum for this purpose. It is, therefore, apparent that this condition for adoption has also not been met and that these proposals should be rejected.

(3) That potentially new MTA-based licensees demonstrate their ability to meet the costs of reallocation of spectrum and systems necessary to accommodate this proposed licensing regimen.

As the Commission is fully aware, the ESMR industry has fallen on hard economic times. Stock prices have plummeted and new avenues of investment have not appeared. Revenue from the operation of systems cannot even meet the costs of financing the construction of these systems due to a lack of demand. There is and can be no assurance that if the Commission were to adopt these proposals that a single supporting entity could or would provide the financial resources to fully compensate displaced analog operators. Meanwhile, growth of analog systems would be chilled by the risk of frequency reallocation and removal of analog operators' ability to gain additional spectrum to meet increasing demand

---

[4] Lagorio again respectfully requests that the Commission reject any notion that compensation will be forthcoming through spectrum refarming. The economic well being of the industry should not be dependent on the uncertain outcome and result of that proceeding.

for dispatch services.[5] In sum, the Commission would create peril without assurance of benefit.

Lagorio contends that its suggested criteria for adoption of the proposals are reasonable and reflect a logical test to determine whether adoption of the proposals is, indeed, in the public interest. Not a single test has been met by the supporters of the proposals. In fact, the comments of supporting entities appear to avoid purposefully any substantive discussion of these vital matters. Accordingly, the Commission should take notice of the needs of traditional SMR operators and the apparent harm to be visited on them by adoption of these proposals, acting to summarily reject each as detrimental to the health of the SMR industry.

In Favor Of Upward Mobility

The telecommunications industry, like most other industries, is characterized by strata of operations which define size, revenues, history, growth, and competitive position. At the top of this industry are the large publicly traded corporations which provide wireline services, such as AT&T or the Regional Bell Operating Companies. At the lower end are small shops repairing two-way radios and pagers. Through hard work, perseverance and intelligent operations, there continues to exist the possibility that a small shop owner might one day operate a large, multi-national telecommunications

[5] Even Nextel relies on the increasing demand for traditional dispatch service, despite its support for the removal of this vital service from the marketplace to be replaced with a service for which little demand has been demonstrated.

concern. That is, there continues to be upward mobility in the industry and it is the promises of these opportunities that attract the entrepreneurs and creative new entrants to the market.

Lagorio has been successful due to hard work and perseverance. Its situation is not unique and is shared with many regional and local operators. Each of these operators seeks additional opportunities to improve their businesses in reasonable reliance upon the Commission continuing to support opportunities that allow for upward mobility. To date, the Commission has a fine record of providing those opportunities in support of entities' desire to continue to grow and prosper.

The proposals contained within the FNPRM run contrary to the Commission's long tradition of fostering upward mobility. If adopted, these proposals would, in effect, create a cap or ceiling on opportunities for local and regional SMR operators, depriving them of additional spectrum and the ability to fully exploit the investments already made in analog dispatch services. The value of those investments would be reduced and no concurrent opportunity would be offered to replace the loss which is realistically available to affected operators.

Lagorio does not believe that the creation of an impenetrable strata in the SMR industry, which cannot logically be entered by the adversely affected analog operators, is in the interest of the telecommunications industry as a whole, or the public it serves.

For this reason, the Commission should reject these proposals and their potentially chilling effect on the entrepreneurial spirit of the industry, upon which it has grown and thrived.

Conclusion

For the reasons stated above, Lagorio respectfully requests that the Commission reject the proposals within its Further Notice of Proposed Rule Making.

Respectfully submitted,
LAGORIO COMMUNICATIONS

By

Robert H. Schwaninger, Jr.

Brown and Schwaninger
Suite 650
1835 K Street, N.W.
Washington, D.C. 20006
202/223-8837

Dated: March 1, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Counsel for:
Pittencrief Communications, Inc.
E.F. Johnson Company
Gulf Coast Radio Fone
Deck Communications, Inc.
Nodak Communications
Wiztronics, Inc.
Raserco, Inc.
Vantek Communication, Inc.
Southern Minnesota Communications
Brandon Communications, Inc.
Dakota Electronics
Bis-Man Mobile Phone, Inc.
Rayfield Communications
B & C Communications
Radio Communications Center
Keller Communication, Inc.
Don Clark Radio Communications
Pro-Tec Mobile Communications
Automated Business Communication
Morris Communications
Nielson Communications
E.T. Communications Company
Bolin Communications System
Diamond "L" Industries, Inc.

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

Counsel for:
Ericcson Corporation

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

Counsel for:
Fisher Communications, Inc.
American Mobile Telecommunications Assoc.

Motorola, Inc.
1350 Eye Street, N.W.
Suite 400
Washington, D.C. 20005

Kelly & Povich, P.C.
1101 30th St., N.W.
Suite 300
Washington, D.C. 20007

Counsel for:
Advanced Mobilecomm, Inc.

Mintz, Levin, Cohn, Ferris, Glovsky, & Popeo, P.C.
701 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Counsel for:
McCaw Cellular Communications, Inc.

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW
Suite 300
Washington, DC 20554

Counsel for:
The SMR Small Business Coalition

Mark J. Golden
Meyer, Faller, Weisman & Rosenberg, P.C.
4400 Jennifer Street, NW
Suite 300
Washington, DC 20015

Counsel for:
Personal Communications I

Wiley Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Counsel for:
Robert J. Butler

William R. Miller
Russ Miller Rental
3620 Byers Avenue
Fortworth, Texas 76107

Joel Freedman
Vice President, General Counsel
Dial Call Communications
1355 Peachtree Street, Suite 755
Atlanta, GA 30309

Mark Lindquist
Communications Center, Inc.
Box 1034
Pierre, SD 57501

John D. Pellegrin
1140 Connecticut Avenue, N.W.
Suite 606
Washington, DC 20036

Counsel for:
American SMR Company

Duncan C. Kennedy
Genesee Business Radio
992 Cater Street
Rochester, NY 14621-1910

Meyer, Faller, Weisman
& Rosenberg, P.C.
Allan S. Tilles
4400 Jenifer Street, NW
Suite 380
Washington, DC 20015

Counsel for:
Parkinson Electronics

Ross & Hardies
888 16th Street, NW
Suite 400
Washington, DC 20006

Counsel for:
SMR Won

Fisher, Wayland, Cooper,
Leader & Zargoza, L.L.P.
2001 Pennsylvania Avenue, N..W.
Suite 400
Washington, DC 20006

Keller & Heckman
1001 G Street, NW
Suite 500 West
Washington, DC 20001

Counsel for:
The Southern Company
DCL Associates
American Petroleum Institute
US Sugar Corporation

Lewis H. Goldman
1850 M Street
Suite 1080
Washington, DC 20036

Counsel for:
Douglas L. Bradley

McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, NW
Washington, DC 20036

Bryan Cave
700 Thirteenth Street, NW
Suite 700
Washington, DC 2005-3960

Counsel for:
CenCall, Inc.

Timothy P. Haley
Centennial Telecommunication
130 N. Bond Street
Suite 201
Bel Air, MD 21014

Latham & Watkins
1001 Pennsylvania Ave., NW
Washington, DC 20004

Counsel for:
Vanguard Cellular Systems
Raymond B. Grochowski

Charles C. Townsend
Atlantic Cellular Company
15 Westminster St., Suite 830
Providence, RI 02903

Raymond J. Stone
American Industrial & Marine Electronics, Inc.
P.O. Box 715
Dover, Delaware 19901

John E. Sonneland
Courtesy Communications
W. 801 Fifth Ave.
Suite 410
Spokane, WA 99204

Michael R. Carper
4643 South Ulster Street
Suite 500
Denver, CO 80237

Morrison & Foerster
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, DC 20006

Industrial Telecommunications Association, Inc.
Alliance of Private 800/900 MHZ Licenses
Frederick J. Day, Esq.
1110 North Glebe Road
Suite 500
Arlington, VA 22201-5720

Cellular Telecommunications
Industry Association
Michael F. Altschul
Vice President, General Counsel
1250 Connecticut Avenue, N.W.
Suite 200
Washington, DC 20036

Association of Public-Safety
Communications Officials International, Inc.
Wilkes, Artis, Hedrick & Lawe, Chartered
1666 K Street, N.W.
Suite 1100
Washington, DC 20006

Council of Independent Communication Suppliers
Frederick J. Day
Mark E. Crosby
1110 N. Glebe Road
Suite 500
Arlington, VA 22201-5720

Organization for the Protection and
Advancement of Small Telephone Companies
Lisa M. Zgina, General Counsel
21 Dupont Circle, N.W.
Suite 700
Washington, DC 20036

Dru Jenkinson, Inc.
Bessozzi, Gavin & Cravn
1901 L Street, N.W.
Suite 200
Washington, DC 20036

National Telephone Cooperative Assoc.
David Cosson
2626 Pennsylvania Ave., N.W.
Washington, DC 20037

Spectrum Resources, Inc.
A.C. Miller
307 Annandale Road
Suite 101
Falls Church, VA 22042

Chadmoore Communications
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, DC 20005-3919

Palmer Communications, Inc.
Marianne H. Lepara
12800 University Drive
Suite 500
Ft. Meyers, FL 33907-5333

Total Comm, Inc.
William C. Wyatt, President
2701 N. Van Buren
Enid, OK 73703

Utilities Telecommunications Council
Jefrey L. Sheldon, General Counsel
1140 Connecticut Ave., N.W.
Suite 1140
Washington, DC 20036

U.S. Small Business Administration
Jere W. Glover, Esq.
409 3rd Street, S.W.
Washington, DC 20416

Communications Unlimited, Inc.
Lewis H. Goldman
1850 M. Street, N.W.
Suite 1080
Washington, DC 20036

Nextel Communications, Inc.
Robert S. Foosner
800 Connecticut Avenue, N.W.
Suite 1001
Washington, DC 20006

Telleculular de Puerto Rico, Inc.
Law Offices of Richard S. Myers
1030 15th Street, N.W.
Suite 906
Washington, DC 20006

Freedom Mobile Communication, Inc.
Jerome M. Freund, President
14 Ray Street
Beaver Falls, PA 15010

Delta Communications, Inc.
Kimo C. Chun, Director
2646 Kilihau Street
Honolulu, HI 96819

Southwestern Bell
Linda M. Hood
173330 Preston Road
Suite 100A
Dallas, TX 75252

Associated Public Safety Communications Officer, Inc.
Wilkes, Artis, Hedrick & Lane, Chartered
1666 K Street, N.W.
Washington, DC 20006

Kisha Jackson