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

MAR - 1 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

To: The Commission

REPLY COMMENTS

Madera Radio Dispatch, Inc. (Madera), by its attorneys, respectfully submits its reply to the comments filed in the above-captioned matter. In support of its position, Madera shows the following:

Parity Is No Substitute For Competition

Assuming, arguendo, that the commenters who have supported the proposals have met their burden of proof regarding whether the Commission might recognize SMR services as "substantially similar" to Cellular or PCS services, those same commenting parties have not shown that adoption of the proposals will enhance competition in the marketplace. In fact, the Commission has received numerous comments that state that competition in the provision of services will be substantially

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reduced, see, e.g. Comments of Thomas Luczak, Pro Tec Mobile Communications, Inc., and SMR Won. It would be an inappropriate dereliction of its duties for the Commission to decide the instant matter without a thorough examination of the competitive impact of its decision.

Madera suggests a logical balancing test be applied to enable the Commission to determine the anticompetitive impact of its adoption of the proposals versus the impetus to provide regulatory parity among services which have historically never been viewed as substantially similar. That these services are, in fact, not similar is apparent when one considers that the vast majority of millions of end users of SMR services are subscribing to analog dispatch services from non-interconnected facilities. Even Nextel Communications, Inc.'s (Nextel) customer base is by and large populated by customers who are not receiving interconnected service. Accordingly, there is grave doubt, based on facts and established precedent, whether the Commission might even find a reasonable basis for considering any form of regulatory parity between these various services.

If, however, the Commission were drawn toward the conclusion that, under certain circumstances, parity might be appropriate, the Commission would still need to determine whether granting parity will have an anticompetitive impact on the market; and whether that impact is so severe as to negate all justification for parity. Madera avers that the anticompetitive impact on traditional analog operators and the

entirety of the SMR market will be so severe that no plausible justification for granting parity, under any circumstances, is possible or appropriate.

Those entities and persons who would be adversely affected by the Commission's grant of the proposals have sung in harmony in this proceeding, declaring that each's business would be devastated by grant of the proposals. The irreparable injury to be suffered by these parties cannot be justified on balance when one considers the alleged benefits to be gained by adoption. What might be gained is greater flexibility for Nextel to continue to advance its domination of the market to provide a service for which no demand has been demonstrated or which is likely to emerge.

Nor may the Commission reasonably expect that ESMR services will ever compete with either Cellular or PCS. At best, ESMR operators would receive authority to operate on 200-channel blocks within MTAs. Simultaneously, Cellular operators' boundaries are different (MSAs and RSAs) thereby eschewing logical comparisons and those operators employ a larger band of spectrum. PCS operators will employ up to 30 MHz of bandwidth, therefore, attempts at regulatory parity cannot be successful between SMR and PCS either.¹ These great differences in market area, bandwidth, and services defy any hope that true competition between

¹ It should also be noted that Cellular was met with overwhelming public demand for service. In comparison, ESMR has been met with a moribund market and an uncertain future, both technically and financially.

these kinds of entities will ever exist or that the Commission should provide some form of ersatz parity to foster such alleged competition.

Since it is unlikely that actual competition will ever be created between ESMR services and Cellular or PCS services, the Commission should not grant parity to Nextel to attempt to accomplish what the facts fully demonstrate is impossible. The Commission's resources are not well spent in backing a three-legged horse in the Derby, particularly when the Commission will be betting the future of every analog SMR provider in the Country.

Breaking Faith

The perception of this proceeding by most of the analog operators whose frequencies are to be the fodder for Nextel's insatiable appetite, is that the Commission has put politics ahead of fairness in suggesting these proposals. What other explanation can be suggested by this proceeding that appears to be spearheaded by a single, well-connected cadre of entities, which neither represents nor has shown any compassion for the plight of the analog operators? This cadre has invaded the associations, bending their comments to their will; suggested compromises in the form of "consensus statements" which seek to undermine the vitality of the industry for the financial benefit of the largest entities; and have lobbied, cajoled, jawboned and squawked through the collective mouths of biased reporters. Out of this self-serving

effort has sprung the proposals now presented to the analog operators as evidencing sufficient reasonableness to be worthy of the Commission's consideration.

Were the Commission to spend even a day with an analog SMR operator, it would quickly discover the source of the operators' aggravation with these proposals. Those operators would be discussing the lack of available additional spectrum due to Nextel's systems which have claimed blocks all over the Country. They would discuss the potential devaluation of their investment through adoption of the proposals. Those operators would speak to the actual cost, not the sugar-coated characterizations forwarded by Nextel, in participating in forced frequency allocation. They might raise the application freeze, the increased use of short-spacing by ESMR operators, the effect of speculation, and the threats that some have had to endure to encourage them to sell out. Analog SMR operators have been buffeted by an adverse competitive climate that was not of their making and which was begun at the moment that the Commission granted Nextel its first waiver.

Conclusion

The analog operators genuinely hope that the Commission will not break faith with them, allowing Nextel and others the ability to dismantle systems and the competition they provide to the marketplace. To this end, Madera respectfully requests that the Commission reject the proposals offered in this proceeding and

restore the integrity of the Commission's rule making policies which, in an earlier time, would not countenance such an obvious abuse of the public interest.

Respectfully submitted,
MADERA RADIO DISPATCH, INC.

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.

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

Counsel for:
Personal Communications I

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

Counsel for:
Ericsson 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

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

Counsel for:
Robert J. Butler

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

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

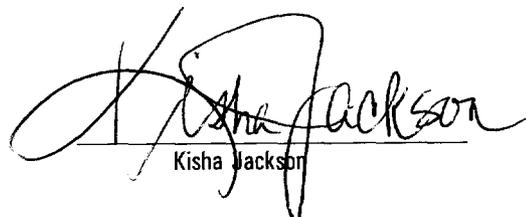
Tellicellular de Puerto Rico, Inc.
Law Offices of Richard S. Myers
1030 15th Street, N.W.
Suite 906
Washington, DC 20006

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