DOCKET FILE COPY ORIGINAL

RECEIVED
MAR - 1 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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
OF THE
COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

The Council of Independent Communication Suppliers ("CICS"), hereby respectfully submits these Reply Comments responsive to the various comments filed in the above-referenced proceeding on January 5, 1995.

II. REPLY COMMENTS

The Feasibility of Retuning

1. In its Comments in this proceeding, CICS challenged the proponents of retuning to demonstrate conclusively that retuning would be technically feasible, economically efficient and not seriously disruptive of existing operations. Nextel, in its

comments, presented an evaluation of two major urban areas, Chicago and Denver. In each case, Nextel believed that all of the existing "local" SMR systems on channels 401-600 could be successfully retuned to other frequencies at 800 MHz, although "a combination of approaches, including voluntary channel swaps, operating agreements, channel purchases and mergers" would be necessary in Chicago.

2. Regardless of whether retuning is technically feasible, there are other factors which suggest that, in the short-term, retuning is neither administratively nor operationally feasible. In any environment, the retuning effort is likely to cause a significant amount of disruption to existing operations of incumbent licensees. Further, unless retuning were carefully and deliberately implemented, there would be an attendant loss of customer good will. For these reasons, CICS cannot support the proposal, advanced by Nextel, for a one-year migration period, the last six months of which would involve mandatory retuning. Even if retuning is technically feasible in all cases, the suggested approach is far too aggressive.

Consideration of Compromise Proposals

3. Like other commenters, CICS is torn between the desire to support, if possible, the efforts of wide-area SMR licensees, while at the same time recognizing that there is a serious, and perhaps

unresolvable tension, between the interests of wide-area licensees and the interests of other SMR licensees. CICS is aware that at least a couple of interested parties intend to use the Reply Comments as an opportunity to introduce suggested "compromise" plans aimed at resolving the perplexing policy issues underlying this proceeding.

4. Although CICS has not examined any of these compromise plans in great detail, CICS would clearly be receptive to further study of any proposals that may offer the promise of a potential solution. In this regard, CICS is intrigued by the proposal, which apparently will be set forth in AMTA's Reply Comments, to license both wide-area and local systems using the Economic Areas developed by the Department of Commerce's Bureau of Economic Analysis. To the extent that this proposal would treat both wide-area and local systems similarly for purposes of geographic licensing, this would appear to be positive. CICS understands that there will also be provisions for "progressive reconfiguration" in AMTA's proposal. This progressive reconfiguration proposal would take the one-year migration period urged by Nextel and extend it over a four-year period. Though CICS remains concerned about the compulsory aspects of the progressive reconfiguration concept, it does have the benefit of allowing unconditional mandatory retuning only in the fourth year.

5. Once the compromise proposals such as AMTA's plan for

progressive reconfiguration, as well as any other proposals developed by other parties, have been officially placed on file with the FCC, CICS will submit the various plans to its membership for an expression of views and vote. If the AMTA plan is any indication, the compromise plans appear to offer at least some prospect for resolution of the fundamental conflicts in this proceeding. For this reason, CICS would appreciate an opportunity to thoroughly explore the compromise proposals with its members, and submit additional comment to the FCC, before the Commission attempts to fashion a decision. CICS realizes that this request is somewhat extraordinary, but it would likely produce helpful guidance with respect to resolution of the outstanding issues.

Relocation Pool

6. The Commission must recognize that it is simply not possible to clear a "relocation block" of sufficient size to ease the transition process. As virtually all of the commenters recognize, the 800 MHz spectrum is heavily used in all of the major urban areas and in many rural areas, both for SMR as well as traditional private systems. There is no ready supply of vacant frequencies in any areas of the country that would prove useful as a relocation block. Consequently, if the FCC were to attempt to create a relocation block, it would invariably have to reallocate channels that are vital to the public safety and public service communications of licensees in non-SMR services. Any effort to

create a relocation block would, therefore, lead to what SMR WON terms a relocation "domino effect."[1] CICS agrees with SMR WON that "[r]olling disruptions to multiple services were not anticipated by Congress."[2]

Incumbency Protection for Systems Licensed After August 9, 1994

7. The Commission's proposal in this proceeding was very specific regarding the class of SMR licensees who could, first, continue to utilize their assigned frequencies and, second, take advantage of the provisions for extended implementation. In each case, the proposal would deny the traditional benefits of licensing and extended implementation to any SMR systems licensed after August 9, 1994. However, as other parties to this proceeding have noted, applicants have virtually no control or influence over the date of licensing.

8. The only date which an applicant can realistically control is the date of filing with the FCC. Thus, in CICS's view, it is arbitrary to limit the traditional benefits of licensing to systems licensed on or before August 9, 1994. Employing the same logic, a more rational and defensible approach would be to extend the benefits of licensing and extended implementation to any systems licensed on the basis of applications filed on or before August 9,

---

[1] SMR WON Comments, page 44.

[2] SMR WON Comments, page 45.

1994.

9. CICS is in agreement with, and endorses, the views expressed by other parties in this regard. It seems ill-advised for the Commission to deny significant benefits of licensing to systems based solely on a cut-off date that was selected on a very random basis. In most cases, the applicants who stand to be disadvantaged by this decision have invested significant sums of money on engineering, frequency coordination and application fees, and filed their applications in full compliance with the existing rules.

II. CONCLUSION

10. CICS continues to view the frequency retuning issue as a perplexing dilemma for which there may be no satisfactory solution. Even if retuning of SMR systems from the upper block to the lower block is technically feasible, there will be undesirable consequences for the systems to be retuned. This will be particularly true if the Commission attempts to implement retuning on a mandatory basis over a relatively short time frame.

11. CICS does hold out some hope that the various efforts by interested parties to develop realistic compromise plans at the reply comment stage may prove fruitful. CICS urges the Commission to allow interested entities additional time to consider and provide feedback on the various compromise plans that do emerge in

the reply comments.

12. Additionally, CICS urges the Commission to extend the incumbent system protections contained in the proposal in this proceeding to the licensees of systems that were applied for on or before August 9, 1994. As worded in the proposal, the incumbent protections would be limited to systems licensed on or before August 9, 1994. CICS believes this approach is arbitrary in its application, because applicants can neither control nor influence the date of licensing.

WHEREFORE, THE PREMISES CONSIDERED, the Council of Independent Communication Suppliers respectfully submit these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS

By: Andrew Daskalakis/FJD
Andrew Daskalakis
Chairman

Enclosure

Prepared by:

Mark E. Crosby
Frederick J. Day
1110 N. Glebe Road, Suite 500
Arlington, VA 22201-5720
(703) 528-5115

Date: March 1, 1995