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

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service	)	PR Docket No. 89-552 RM 8506
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 220-222 MHz	)	PP Docket No. 93-253

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COMMENTS OF US MOBILCOMM, INC.

US MobilComm, Inc. ("USMC"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits its comments in the above-referenced proceeding. As demonstrated below, USMC generally supports the Comments of the American Mobile Telecommunications Association, Inc. ("AMTA Comments") and urges the Commission to adopt AMTA's proposals, with one exception. Unlike AMTA, USMC believes that the Commission should adopt its own proposal and reallocate the nationwide spectrum for commercial use, return without prejudice unprocessed nationwide applications, as well as the appropriate filing fees, to the 33 applicants, and auction the available nationwide licenses.

Background

USMC and its affiliated companies began operations in early 1993 with a goal of building and operating major market wireless voice and data networks of commercial trunked five-channel 220 MHz systems (the "Network"). The Network consists of individually owned, licensed, and controlled systems whose licensees have come together under USMC's common management umbrella.

To date, 200 MHz systems owned and/or managed by USMC have been constructed and are being managed by USMC in the metropolitan areas of Boston, Philadelphia, New York City, Baltimore/Washington, Miami, and Milwaukee. USMC believes that it currently manages more licenses in the major markets on the East Coast than any other 220 MHz management company. Additional USMC markets include Chicago, Dallas, Hartford, Houston, Minneapolis, and Sacramento.

USMC and its counsel have worked with the FCC and AMTA extensively over the past 1 ½ years in an effort to develop guidelines which would be consistent with the goals of the Commission while allowing the 220 MHz industry the flexibility that it needs to develop into the high quality wireless communications service provider it has the potential to become. These efforts have included numerous meetings between senior staff members of the wireless bureau and USMC officials and its counsel, as well as the filing of numerous comments by USMC in this proceeding.

Commission Nationwide Licensing Proposals

The Commission began accepting applications for 220 MHz systems in May 1991, but established a freeze on the acceptance of further applications the same month. The freeze remains in effect today. In order to end the freeze and resolve regulatory uncertainties

surrounding 220 MHz licensing, the Commission, inter alia, issued its Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking, PR Docket No. 89-552, RM-8506, GN Docket No. 93-252, PP Docket No. 93-253 (August 28, 1995) ("3rd NPRM"). The 3rd NPRM is specifically aimed at constructing a new framework for the operation and licensing of 220 MHz systems. 3rd NPRM at ¶¶ 1, 2.

In its 3rd NPRM, the Commission reviewed three options for addressing the 33 pending nationwide, noncommercial applications. First, the Commission proposed to return the applications without prejudice, as well as the appropriate filing fees, to the applicants, and auction the licenses. 3rd NPRM at ¶ 30. Second, the Commission suggested to require the applicants to amend their applications pursuant to its revised orders, and then conduct a lottery. Id. Finally, the Commission proposed to grant authorizations among the applicants through comparative hearings. Id. USMC supports the Commission's first option, as explained below.

The Commission originally designated the 30 channels at issue for nationwide, noncommercial use, whereby the Commission would use a lottery to decide among mutually exclusive applications.[1] Although it received 34 applications for the available channels, the Commission's efforts to issue licenses for the channels has been delayed.[2] The channels remain unlicensed today.

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[1] Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Report and Order, 6 FCC Rcd 2356, 2361-62 (1991).

[2] See 3rd NPRM, at ¶¶ 28-29 (reviewing the history of the nationwide, noncommercial channels). Although 34 nationwide, noncommercial applications were submitted, one application was withdrawn following subsequent 220 MHz rule changes. See id. at n. 35.

Ordinarily, USMC supports a policy that mutually exclusive applications filed before July 23, 1993 be subject to a lottery.[3] However, USMC cannot support such an approach in the instant proceeding because the spectrum will likely be reallocated for a use different from what it was originally intended.

The spectrum at issue was originally allocated for noncommercial use. Now, it is clear that the spectrum is developing into commercial-use spectrum.[4] It simply makes better regulatory and economic sense to reallocate the spectrum for commercial use as opposed to keeping the spectrum allocated for noncommercial use and then allowing the licensees to lease excess capacity. The immediate reallocation of the spectrum would thus avoid a de facto commercial allocation. Furthermore, if the spectrum were reallocated for commercial use, marketplace economics would ensure that licensees would utilize it to its fullest possible extent.[5]

Once the spectrum is reallocated, it would be unfair to move forward with the original applicants since they had applied for noncommercial spectrum, and it would be unfair to other parties that wanted commercial spectrum but had no opportunity to apply for this spectrum. The

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[3] See 47 U.S.C. § 309(j); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Report and Order, PP Docket No. 93-253, 75 RR2d 1 (1994) (implementing a July 26, 1993 cutoff date for mutually exclusive applications in certain services that are subject to auctions); see also, 47 C.F.R. § 1.2102(b)(11) (noting that 220 MHz services are subject to auctions).

[4] In the 3rd NPRM, the Commission questioned whether the channels should continue to be limited to noncommercial use. This is due to the fact that the original reason for allocating the channels for noncommercial purposes -- in order to encourage the development of 5 kHz technology -- is no longer relevant given the fact that the technology is now widely deployed. 3rd NPRM at ¶ 34. Further, the Commission questioned the relevance of restricting the channels to noncommercial use when the licensees could decide -- based upon customer demand -- how the channels should be used.

[5] A party interested in the spectrum for internal purposes can still use it as such and, at the licensee's option, can lease any excess capacity commercially.

most equitable solution would be to allow all parties (including the former noncommercial applicants) that now want commercial spectrum to submit applications for this spectrum. Given the fact that the applications would be newly filed, the Commission would be required to decide among mutually exclusive applications using an auction, as detailed in Section 309(j) of the Communications Act.

USMC is opposed to any limits on the aggregation of 220 MHz spectrum. The entire 220 MHz band is an extremely small sliver of spectrum to begin with. Limits on aggregation restrict the commercial viability of the spectrum and prevent 220 MHz license holders from competing with other CMRS providers.

Conclusion

USMC supports AMTA's proposals regarding regional and EA licensing. However, USMC respectfully requests that the Commission return the 33 pending noncommercial, nationwide applications without prejudice, as well as the appropriate filing fees, to the applicants, and auction the licenses.

Respectfully submitted,

US MOBILCOMM, INC.

By: _____
Eliot J. Greenwald
Kevin M. Walsh

Its Attorneys

FISHER WAYLAND COOPER
LEADER & ZARAGOZA, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

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CERTIFICATE OF SERVICE

I, Ana Julissa Ayala, a secretary in the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P. do hereby certify that on this 27th day of September, 1995, a copy of the foregoing "**Comments of US MobilComm, Inc.**" was sent by U.S. first class mail, postage prepaid to the following:

*Reed E. Hunt, Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

*James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

*Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

*Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

*Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

*John Cimko, Jr., Chief
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 664
Washington, DC 20554

*Regina Keeney, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, DC 20554

*Larry Atlas
Associate Bureau Chief
Federal Communications Commission
2025 M Street, N.W.
Room 5002-E
Washington, DC 20554

*Ralph Haller
Federal Communications Commission
2025 M Street, N.W.
Room 5002B
Washington, DC 20554

*Martin D. Liebman
Policy Division
Wireless Telecommunications
Commission
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, DC 20554

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez, Chatered
1111 19th Street, N.W., Suite 1200
Washington, DC 20036

Rusell H. Fox
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, DC 20005

Richard L. Vega, Jr., President
The Richard L. Vega Group
235 Hunt Club Boulevard
Longwood, Florida 32779

Dennis C. Brown
Brown and Schwaninger
1835 K Street, N.W.
Suite 650
Washington, DC 20006

William J. Franklin
Attorney for Roamer One, Inc.
Law Offices of William J. Franklin
1919 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20006-3404

David J. Kaufman, Esq.
Scott C. Cinnamon, Esq.
Brown Nietert & Kaufman, Chtd.
1920 N Street, N.W., Suite 660
Washington, DC 20036

Mark J. Golden
Vice President,Industry Affairs
Personal Communications Industry Association
1019 19th Street, N.W., Suite 1100
Washington, DC 20036

Alan S. Tilles, Esq.
David E. Weisman, Esq.
Meyer, Faller, Weisman and Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, DC 20015

Robert A. Fay, President
Police Emergency Radio Services Incorporated
82 Herbert Street
Framingham, MA 01701

Thomas J. Keller, Esq.
Vener, Lipfert, Berhard, Mcpherson and Hand, Chatered
901-15th Street, N.W.
Suite 700
Washington, DC 20005-2301

Norma R. Shivley
Senior Project Engineer
SEA, Inc.
7030 220th Street, S.W.
Mountlake Terrace, WA 98043

Laura C. Mow
Counsel for SMR Advisory Group, L.C.
Hunter & Mow, P.C.
1620 I Street, N.W.
Suite 701
Washington, DC 20006

Ana Julissa Ayala

*Hand Delivered
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