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December 8, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N. W.
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

Re: PR Docket No. 92-235

Dear Mr. Caton:

On November 20, 1995, International Taxicab and Livery Association filed its Comments in the above referenced proceeding.

It has come to my attention that certain copies of the Comments may not have included the cover page, table of contents, and summary filed with the original.

Forwarded herewith for inclusion in the docket are additional copies of ITLA's Comments with the missing pages.

Any questions regarding this matter may be directed to the undersigned.

Sincerely,

William K. Keane

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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In the Matter of	)	
	)	
Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them	)	
	)	
and	)	PR Docket No. 92-235
	)	
Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services	)	

TO: The Commission

COMMENTS OF
INTERNATIONAL TAXICAB AND LIVERY ASSOCIATION

William K. Keane
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November 20, 1995

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SUMMARY

ITLA supports the principle of user exclusivity as an appropriate incentive for narrowband (or its equivalent) conversion. However, conversion should not be required for the many licensees outside major urban markets for whom frequency congestion is not a problem. These users should be entitled to exclusivity based upon a variety of factors which would including loading, or special operational or safety requirements, or narrowbanding (if that makes sense for a particular licensee).

Under no circumstances, however, should exclusivity be allowed to drive out the shared use which predominates today; more comment should be taken on this subject from frequency coordinators.

Excess capacity resale should be rejected. Instead, non-profit cost-sharing among eligibles should be the norm. Such a result would allow ample room for spectrum conservation enhancements without fundamentally altering the nature of the allocation.

User fees and auctions are completely inappropriate for PMRS users, if for different reasons. Adequate incentives can be created (via exclusivity and conversion timetables for major urban areas, and the ability to capture new channels) so as to facilitate the introduction of new technologies. Auctions are a non-starter for several reasons including the fact that it would freeze existing licensees without opportunity for expansion or modification of their systems.

Finally, regarding disposition of new channels, any user making the investment to create same should be entitled to capture the benefits thereof: basic equity demands no less.

BEFORE THE

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TO: The Commission

COMMENTS OF
INTERNATIONAL TAXICAB AND LIVERY ASSOCIATION

International Taxicab and Livery Association ("ITLA"), by its counsel, hereby submits its comments on the Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding (FCC 95-255, released June 23, 1995).

ITLA is the national trade association for private sector providers of public ground transportation. It is certified by the Commission as the frequency coordinator for the Taxicab Radio Service, and is the industry's representative on matters pertaining to land mobile radio communications. ITLA is the only national association representing all types of community-based passenger-carrying fleets for-hire. Its members

include operators of taxicabs, executive sedans, limousines, vans, minibuses, and paratransit.

More than 15,000 private sector providers of public transportation exist in the United States. These fleets operate over 250,000 vehicles and transport in excess of 2 billion passengers annually -- 20 percent of all public transit service. More than 350,000 individuals are employed in this industry. They serve all social and economic classes, from those staying at the finest hotels to the residents of the most distressed housing projects. These providers are typically licensed by municipal, county or airport authorities as an essential public utility; the terms of such licenses (or franchises) usually mandate the use of radio-equipped vehicles

The private sector public transportation industry meets critical local transportation needs with respect to commerce, health and welfare. In addition to serving as a lifeline for those without access to a personal automobile or public transit, and the disabled, passenger-carrying fleets complement public transportation. When the use of public transportation is impractical or inconvenient, due to time of day, inclement weather, or heavy packages or the like, private sector providers fill the gap.

A 1995 survey of ITLA members reveals the wide range of consumers of the industry's transportation services. After calls from the general public, the largest purchasers were social service agencies, private companies, hospitals, airports, other

public agencies, local governments, hotels, school districts, and public transit authorities. Indeed, half of ITLA's members supply non-emergency medical transportation for Medicaid.

The overwhelming majority of all private passenger-carrying fleets are now equipped with two-way communications systems. Typically, a routine passenger trip includes five transmissions between the base dispatcher and the mobile unit. The result is 10 billion transmissions annually, merely for such routine passenger transportation purposes. Moreover, ITLA estimates that another 5 billion base-mobile transmissions occur for reasons including driver safety alerts, credit card verification, address confirmation, and directions.[1/]

Two-way radio communication has transformed our industry. While it was once limited to cruising major streets in the largest cities in the hope of finding a fare, it now may respond to the specific requests for transportation service in numerous communities nationwide. The ability of the base dispatcher to communicate with the mobile driver has enabled the industry to expand into suburban, small and rural communities. Today, nearly one-third (30%) of all taxicab services are provided to small communities, as well as 17% and 14% in suburban and rural areas, respectively. Only 39% of taxicab service operates in urban areas, once its mainstay.

[1/] In the last five years payment of fares by credit card has grown to approximately 150 million passengers per year. Widespread acceptance of credit cards developed only after efficient credit card verification was accomplished over radio systems.

The transformation to a dispatch-based industry has produced other benefits to society in addition to diversifying the neighborhoods to be served. These advantages include the resulting reductions in fuel consumption, air pollution, and traffic congestion.

The safety features of base-mobile communications are particularly critical to the taxicab industry, driving a taxicab being the most dangerous job in America according to the National Institute for Occupational Safety and Health of the U.S. Department of Health and Human Services. As stated in a recent report, 15.1 drivers out of every 100,000 are murdered in the course of their employment. The second-highest homicide rate in any profession was significantly lower; law enforcement officers are murdered at a rate of 9.3 per 100,000 workers. Clear communications are an essential component of efforts to save the lives of taxicab drivers.

The taxicab industry also utilizes two-way communications to perform safety functions for the public at large. Increasingly, taxi and law enforcement agencies are cooperating to sponsor Cabs On Patrol ("COP") programs whereby drivers report auto accidents, fires, robberies and the like to the base station. The dispatcher then contacts the appropriate authorities serving the community to respond to the emergency.

In addition to these traditional base-mobile transmissions, the industry is increasingly engaged in other types of communications. These include automatic vehicle

location; vehicle and driver performance monitoring; security and emergency request systems; collision warning and avoidance programs; and electronic payment services. The industry also administers information systems used to convey route, navigational and electronic maps, as well as rider information. Moreover, radio transmissions are utilized to operate travel information centers. These additional functions are increasing dramatically. ITLA estimates that they will double the industry's current level of communications activity in the near future.

Indeed, the industry is increasingly moving toward computer-aided digital data communications systems. Such systems, while expensive, will further improve performance, reduce costs and increase competitiveness. Spectrum efficiency is also enhanced by such systems.

Clearly the private sector public transportation industry will continue to rely on private radio to meet its varied communications needs.

And just as clearly this proceeding will have a profound effect -- for good or for ill -- on the utility of the communications resources our industry has come to depend upon.

ITLA wishes to express its gratification that in many respects the Commission has fashioned a re-farming transition scheme which is respectful of industry's needs and interests. Both the industry and the Commission have benefitted from their refarming transition dialogue. While important differences

remain (chiefly on the subject of consolidation), ITLA hopes that continued dialogue on these differences, can produce a result which makes sense for all concerned.

In particular ITLA would like to compliment the Commission on its decision to allow maximum flexibility for users, to avoid new regulatory mandates, and to craft incentives which can help realize a successful transition to a re-farmed environment. ITLA offers the following comments on the Further Notice portion of the re-farming Order,

BACKGROUND

The Further Notice seeks comment on three issues: exclusivity, user fees and auctions. In particular, the Commission proposes to create a regime of "shared exclusivity" under which existing licensees committing to install more efficient, narrowband technology within a given period of time would be able to foreclose the licensing of additional systems on their channels. Such licensees would be allowed to strike agreements among themselves to this end, which agreements would be filed with the frequency coordinators; the coordinators in turn would be empowered to suspend any additional coordinations on the subject frequency for a period of 90 days in order to allow the proponents to secure a complete agreement among all co-channel licensees. Under the Commission's proposal, licensees entering into such arrangements and completing the conversion to narrowband technologies would be allowed to lease excess capacity. Further Notice at para. 129. The Commission expresses

the view that allowing "shared exclusivity" will encourage more efficient spectrum use.

The same view is expressed regarding the next proposal, i.e. the imposition of user fees. Here the agency envisions being able, if authorized by Congress, to in effect penalize licensees who use the spectrum "less efficiently" or in ways which represent a greater opportunity cost to others. Spectrum use fees could include factors such as bandwidth, area of operation, and population coverage, and would be based on the price set for other "similarly situated spectrum bands" such as IVDS and Narrowband PCS. Id. at para. 138.

In the alternative, the agency requests comment as to how it might implement auctions in the private land mobile bands, again if authorized by Congress. Here the Commission contemplates auctioning geographic overlay licensees as is to be done for 900 MHz SMR and MDS.

Finally the Commission asks how it should treat channels newly-created by licensee conversion to narrowband equipment, e.g. preserving them for auction, assigning them to public safety, or distributing them among the consolidated radio services. Id. at para. 148.

DISCUSSION

EXCLUSIVITY

At the outset it should be stressed that ITLA does not oppose the concept of exclusivity (even though the Commission's

proposal does not contemplate true exclusivity[2/]); on the contrary, exclusivity would be a significant benefit to many large users. The success of the Commission's exclusive licensing program above 512 MHz is ample proof of this. However, restricting this benefit solely to licensees who agree upon an early conversion to narrowband technology is neither necessary nor equitable.

In certain areas of the country, namely the major cities, channel congestion is such that an inducement for early narrowbanding may make sense. However, in most areas and for most users channel congestion is a non-issue: such users should not be required to convert in order to secure the benefits of exclusivity. Rather, users outside, say the top-20 metropolitan areas, should be eligible for exclusivity depending upon a variety of factors including (besides narrowbanding), special safety or operational requirements, or the attainment of specified loading levels (perhaps along the lines of those suggested in the Notice of Proposed Rulemaking) -- any one or more of these accompanied of course with the concurrence of co-channel licensees.[3/]

If market forces are to be allowed greater opportunity to operate -- as the Commission generally espouses -- licensees

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2/ "Shared exclusivity" is a contradiction in terms.

3/ Again, for channel congestion reasons ITLA would support a specific period of time (e.g. six months) for licensees in top-20 metropolitan areas to commence the exclusivity filing process envisioned in the Further Notice at para. 129. Licensees outside these areas should not be so constrained.

in non-congested areas should be allowed to strike exclusivity agreements with other users when and as their individual circumstances warrant, and whether they operate on 25 kHz or narrowband equipment. Moreover, the Commission should avoid issuing regulations which have the effect of forcing the premature replacement of perfectly serviceable equipment -- the very effect that would be created in many areas of the country where channel congestion is not a problem. In such a scenario, the only parties which stand to benefit are equipment vendors who presumably relish the thought of selling new equipment to companies who would not need it but for an order from Washington.[4/]

While exclusivity is a desirable option under the framework outlined above, exclusivity should not be allowed to drive out shared use. The vast majority of private land mobile users are likely to remain quite content with the communications provided via shared channels. This option must in all events remain available to the user community. Hence, before finalizing any exclusivity plan the Commission should request a recommendation or recommendations from the frequency coordinators as to the amount of spectrum that should be reserved for shared use, it being understood that the Commission would have the final

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[4/] The 90-day period suggested for securing co-channel agreements (Further Notice at para. 129) is not nearly long enough: in major metropolitan areas there could be numerous users with whom exclusivity agreements would need to be negotiated. Incumbents should be given at least six months to secure such agreements before applications for new facilities would be entertained.

say. This could involve designating an entire band or portions of several bands for shared use; regardless of the method chosen, further thought and comment is required before there can be any closure on this critical issue.

Whatever exclusivity agreements are reached, the agency should dismiss the notion of excess capacity resale. These bands have been allocated for the internal communications purposes of licensees. They provide essential support for the operations of major sectors of the economy. Allowing resale would fundamentally alter the nature of the allocation and, over time, deprive millions of companies of an essential factor of production.[5/]

Rather the Commission should follow the non-SMR regime at 800 and 900 MHz; only non-profit cost-sharing among eligibles should be allowed. See Rule 90.603. Such an approach will allow users to combine their systems (so as to trunk channels, for example) without depleting channels available for internal communications needs.

[5/] The Further Notice asks whether other technologies such as cellular and SMRs could provide an acceptable substitute. Id. at para. 128. The answer is a resounding "NO". Commercial carriers specialize in homogenized solutions to lowest common denominator needs. Private licensees long ago rejected the carrier solution as entailing too high a price both in operational control, in reliability, and in real dollar terms. Moreover, private radio user communications needs are often highly individualized, and ill-suited for the one-size-fits-all offerings of carriers. The extraordinary growth in private land mobile radio use over the last 15 years is proof enough -- marketplace proof if you will -- that the demand for owned and operated internal radio systems is not adequately served by carriers.

USER FEES

The Commission has no authority to impose user fees, and is not likely to gain such authority in the near future.[6] Nonetheless, the following comments are offered.

User fees should not be applied to existing licensees. The incentives identified herein for conversion to more efficient operating patterns (e.g. exclusivity), and timetables for conversion in major urban areas, will be sufficient to encourage more intensive use of the spectrum; user fees would not add significantly to these incentives.

Moreover, the Further Notice's suggestion that IVDS and PCS might establish a "value" for PLMRS spectrum is seriously mistaken; the auction price for commercial spectrum is not relevant to the value of spectrum used in a supporting role for non-communications businesses.

Existing users already pay regulatory fees, and there is no policy basis for changing this system to one which contemplates a new form of tax for users of the spectrum.[7]

AUCTIONS

Auctions are inappropriate for the PLMRS. Such spectrum is used for internal communications as one of many

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[6] Budget Reconciliation language passed by the House and Senate would expand the FCC's auction authority, not allow user fees.

[7] While a number of PLMRS groups have suggested a willingness to pay for new spectrum, that willingness has always been tied to a new allocation, it being recognized that in the current budget climate additional spectrum is not likely to be allocated absent some form of economic compensation.

factors in the production or delivery of goods and services. PLMRS users are by and large not in a position to bid effectively against the communications carrier-types who would use the spectrum to generate revenue from paying subscribers.

Even if one were to conclude that ability to pay (bid) should not be a consideration in a free market for spectrum, auctions would be inappropriate. For openers PLMRS spectrum is already heavily encumbered; there are no tidy blocks of vacant or cleared spectrum available for auction. Instead the Commission would be left with auctioning a channel here, a channel there, with the number of actual auctions, much less the sequencing thereof, left entirely to happenstance. The licensee needing a wide-area system, or an extended ribbon-type system, for example, could find it next to impossible to acquire the same frequency in multiple areas. Moreover, if the agency were to freeze incumbents' existing operations in favor of overlay license auctions as it suggests (Further Notice at para. 142), serious adverse consequences would be visited upon licensees needing to expand or modify their coverage or usage. See Further Notice at para. 142. In short, the transaction and opportunity costs auctions would entail for users and the Government would far outweigh any perceived efficiency gains.

DISPOSITION OF NEW CHANNELS

The Further Notice fails to recognize, much less propose, the most appropriate disposition for channels newly-created by narrowbanding; namely, allowing them to remain with

the licensees whose capital investment in new equipment made the new channels possible. Indeed, while repeatedly stressing the Commission's desire to provide incentives for a transition to narrowband technology, the Further Notice perversely creates a disincentive to narrowbanding: by suggesting that an existing user, whose own investment created the channel, would not have the right to it, the Commission effectively penalizes the licensee who converts as compared with the one who remains at 25 kHz.

Rather, by allowing existing licensees to capture the value of their investment in narrowband equipment, i.e. by retaining the newly-created channels, the Commission would have provided an additional incentive for channel creation -- an incentive which would complement and reinforce the incentive represented by the opportunity for exclusivity.[8/] In the event the Commission does not reach this determination, the new channels should at least be allocated to the Service (or, conceivably, pool) in which they were created.

CONCLUSION

Looming over the Further Notice is a mind-set at the Commission which appears to dismiss the value of private radio channels; which seems to discount the past 40 years of FCC policy

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[8/] Licensees in the congested markets should be given a specific period of time within which to claim adjacent narrowband channels (or their current 25 kHz channel if they install technology with equivalent efficiency). This period should coincide with the period of time allowed for the election of exclusivity. Licensees outside these areas should again be allowed an extended period.

in this area as of little or no relevance; and which equates spectrum policy with the interests of the highest bidder. Such a view reflects a fundamentally misguided notion as to the importance of private radio to the efficient workings of the economy. It also represents an abdication of the Commission's duty under the Communications Act to fashion its regulations consistent with the public interest: the public interest should not be equated with auction receipts alone.

For the foregoing reasons ITLA urges the Commission to refashion its approach to exclusivity; and to abandon the proposals for excess capacity resale, auctions and user fees.

Respectfully submitted,

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November 20, 1995