

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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)
)
Examination of Exclusivity and)
Frequency Assignment Policies)
of the Private Land Mobile)
Radio Services)

JAN 11 1995
FEDERAL COMMUNICATIONS COMMISSION

PR Docket No. 92-235

To: The Commission

**REPLY COMMENTS ON FURTHER NOTICE OF PROPOSED RULE MAKING
AND MOTION TO CONSOLIDATE**

Securicor Radiocom Limited ("Securicor"), by its counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby submits its Reply Comments on the Further Notice of Proposed Rule Making, FCC 95-255 (June 23, 1995) ("FNPRM") in the above-captioned proceeding and moves the Commission to consolidate the outstanding petitions for reconsideration of the Report and Order¹ in this proceeding together with all comments and reply comments on the FNPRM and comments and proposals filed regarding the consolidation of the Private Land Mobile Radio ("PLMR") services. Securicor respectfully suggests that both the Commission's objectives in this proceeding and the needs of users would be better served by

¹ 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 Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services, PR Docket No. 92-235, FCC 92-255, 60 Fed. Reg. 37152 (1995).

No. of Copies rec'd 024
List ABCDE

considering the Comments and Reply Comments on the FNPRM regarding the Commission's market-based proposals for increasing efficient use of the PLMR spectrum with the petitions for reconsideration of the Report and Order and the Comments regarding consolidation in one comprehensive decision. Given the dramatic changes in the industry since the first Notice of Proposed Rule Making was released in 1991, the Commission should acknowledge that the record in this proceeding has become stale and that all interested parties would benefit from a fresh look at the technological developments that have been introduced and how they can best serve the needs of users.

In its Comments on the FNPRM, Securicor stated its long-standing position that the implementation of a system of user fees for the refarmed bands would best enable marketplace forces to operate to ensure economically efficient choices by users of those bands. Assuming that Congress grants the authority to impose user fees in the PLMR bands, the Commission will gain a powerful tool to increase efficient use of this spectrum. Users will better appreciate the need to increase efficiency, and manufacturers will then have greater incentive to produce more efficient equipment. As Securicor has pointed out, a schedule of user fees should use current state-of-the-art technology as the beginning point and reward ever-increasing efficiency. This dynamic can lead users and manufacturers to higher levels of efficiency without the need for periodic rule makings. Accordingly, the essential factor in the user fee equation should be as small a spectrum block as possible, such as 1.25 kHz.

In addition to user fees, Securicor supports the adoption of "shared exclusivity" as proposed in the FNPRM. This proposal offers early adopters of narrowband technology a reward that may speed the transition to more advanced technology and compensate them for higher costs

associated with the transition.

In response to the FNPRM, the FCC received 29 comments from users, industry groups, consolidators, and manufacturers regarding user fees, shared exclusivity with right to resell, and competitive bidding. The responses tend to be as varied as the interests of the commenters. Only one issue garnered near-unanimous support. Virtually every commenter stated that auctions are inappropriate and would be unworkable in the PLMR bands. Beyond that, the comments on the proposed market-based incentives are as consistently diverse as the reactions to the Report and Order as reflected in the petitions for reconsideration.

There appears to be general support for the concept, if not the specific proposal set forth in the FNPRM, for the imposition of user fees for other users provided they are "reasonable" and are calculated "properly."² There is some concern about the propriety of singling out Part 90 users for fees.³ Some commenters contend, however, that user fees are unnecessary as an incentive to conversion; they argue that congestion is enough to persuade users of the merits of narrowband technology.⁴ In general, most commenters support user fees for those not engaged in public safety functions as a way of inducing licensees to use spectrum more efficiently. The Boeing Company, like Securicor, emphasizes the need to impose user fees based on the efficient use of the spectrum. Securicor has proposed a user fee based on a "building

² See, e.g., Comments of UTC, The Telecommunications Association ("UTC"); Comments of Alarm Industry Communications Committee; Comments of American Petroleum Institute.

³ See, e.g., Comments of Land Mobile Communications Council; Comments of International Taxicab and Livery Association.

⁴ See, e.g., Comments of the Association of America Railroads.

block" approach that accurately assesses the cost of using a given amount of spectrum. The more efficient the user, the lower the user fee. This is similar to the focus that Boeing believes the Commission should take in calculating user fees.⁵ Consideration of the actual amount of spectrum used should be the guiding principle for the establishment of user fees. A 1.25 kHz building block offers the advantage of an objective criterion by which to assess efficient use of the spectrum.

Several commenters would limit the right to resell excess capacity freed up as a result of the migration to more spectrally-efficiency equipment to prohibit using this spectrum for commercial purposes; others have proposed that excess capacity in the PLMR bands should not be sold or leased at all.⁶ Securicor believes that the responsible way to provide proper incentives for the conversion to narrowband technology is to permit resale on a limited basis that rewards those licensees that convert to the current state-of-the-art in commercially-available systems, provided that exclusivity agreements are signed promptly and systems are built quickly. In this regard, Ericsson and NTT support the resale of excess capacity.⁷ NTT characterizes this option as one that "would provide not only an incentive for migration, but in many cases, the sole financial means to undertake a conversion to narrowband technology."⁸ Without the ability to

⁵ See Comments of the Boeing Company at 9 ("[T]he proposed fee structure is totally unrelated to the efficiency with which spectrum is used by licensees.")

⁶ See, e.g., Comments of UTC; Comments of LMCC; Comments of API; Comments of AICC; Comments of AAA.

⁷ See Comments of The Ericsson Corporation at 3; Comments of Nippon Telegraph and Telephone Company at 4-6.

⁸ Comments of NTT at 6.

reap the rewards of efficiency by being able to lease or sell excess capacity, users will be deprived of an important market-based incentive to move to more efficient equipment faster.

Although the FNPRM seeks comments on three specific market-based incentives, several commenters used the opportunity to raise issues that more properly should be considered on reconsideration of the Report and Order. Motorola, for example, argues that all three of the market-based incentives set forth in the FNPRM are inappropriate for the PLMR bands because they are incompatible with "the fundamental nature of the refarming bands."⁹ In their place, Motorola would have the Commission mandate a replacement of existing technology at a date certain.¹⁰ Motorola asks the Commission to require that 25 kHz equipment be replaced with 12.5 kHz or equivalent equipment by 2005. All new systems would be required to operate with 12.5 kHz or equivalent capable technologies regardless of the frequency of operation. There is no mention of any required date for the conversion to 6.25 kHz or very narrowband technology. Adoption of 6.25 kHz or 5 kHz technology would merely be at the option of the user.¹¹ Motorola's comments not only raise issues that were addressed by the Report and Order, but also turn back all of the efforts of the Commission to advance efficiency in the refarmed bands. As Securicor has pointed out in the past, 12.5 kHz technology is old technology that will do little to meet the dramatic need for improved efficiency. It is most certainly not a technology on which to base the future of spectrum efficiency in the PLMR bands.

⁹ Comments of Motorola at 6.

¹⁰ Id. at 9.

¹¹ Id. at 3.

In addition, the Land Mobile Communications Council ("LMCC") raises a number of "residual" issues that it believes must be addressed such as technical guidelines to enable frequency coordinators to deal with various types of technologies; measures to allow the re-licensing of existing low-power offset operations in the 450-470 MHz band for primary operations; and specific deadlines for conversion to narrowband equipment.¹² LMCC also specifically states that "it is imperative that the existing transition plan be further refined before the Commission proceeds with any sort of economic incentives."¹³

While Securicor does not necessarily disagree with some of these points, indeed some type of conversion deadline directly to state-of-the-art very narrowband technology would be useful and appropriate in meeting the objectives originally set forth by the Commission in this docket, Securicor respectfully suggests that all of the comments, consolidation plans, and petitions for reconsideration filed in this proceeding indicate that a refarming solution acceptable to both users and manufacturers has not been reached.

Since the Report and Order was released last June, the entire PLMR industry has focused on refarming to a greater degree than ever before. Users, frequency coordinators, and manufacturers have been engaged in an ongoing dialogue on virtually every issue raised in this docket. The upcoming January 31 en banc on spectrum policy provides another unique opportunity to continue discussions among the Commission, users, coordinators, and manufacturers regarding the best way to reform the PLMR bands.¹⁴ The Report and Order has

¹² Comments of LMCC at 8.

¹³ Id.

served as a useful spur for the ongoing discussion of what is really needed to relieve congestion and improve efficiency in the PLMR bands, but given the current and obvious lack of consensus in the industry on many critical issues, the Report and Order cannot, and should not, be viewed as the final definitive answer to these issues.

With Motorola's latest comments on the FNPRM, there is now widespread consensus among manufacturers that the Report and Order should be reconsidered, although for different reasons. Motorola seeks a decision that insulates 12.5 kHz equipment for a defined period of time. Other manufacturers such as SEA, Ericsson, NTT, and Securicor have repeatedly urged the Commission to ever-increasing levels of efficiency using existing state-of-the-art 5 kHz technology as the starting point and not as a possible end point. The failure to adopt this framework will result in a loss of spectrum value totaling *billions* of dollars and *thousands* of U.S. jobs as set forth in an economic analysis prepared by Hatfield Associates, Inc. on behalf of Securicor.¹⁵ That report has not been challenged by any party to this proceeding. Further, unless users appreciate the real cost of spectrum, the Commission will find itself having to repeatedly deal with congestion and the need to reform the PLMR bands.

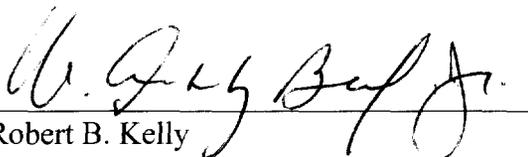
¹⁴ Securicor has requested an opportunity to appear before the en banc hearing.

¹⁵ See Petition for Reconsideration filed by Securicor Radiocoms Limited and Linear Modulation Technology Limited, filed August 18, 1995, Appendix, "The Economic Impact of Refarming" prepared by Dale N. Hatfield and Gene G. Ax, Hatfield Associates, Inc.

For these reasons, Securicor respectfully urges the Commission to consolidate its consideration of the comments filed in response to this FNPRM with its consideration of the petitions for reconsideration of the Report and Order, or, in the alternative, initiate a new rule making to consider the significant changes that have taken place in the PLMR industry.

Respectfully submitted,

SECURICOR RADIOCOMS LIMITED

By: 
Robert B. Kelly
W. Ashby Beal, Jr.

KELLY & POVICH, P.C.
Suite 300
1101 30th Street, N.W.
Washington, D.C. 20007
(202) 342-0460

ITS COUNSEL

January 11, 1996

CERTIFICATE OF SERVICE

I, W. Ashby Beal, Jr., hereby certify that on this 11th day of January, 1996, a copy of the foregoing Reply Comments of Securicor Radiocom, Ltd. was served by U.S. first-class mail, postage prepaid, on the following:

David C. Jatlow
Young & Jatlow
2300 N Street, N.W.
Suite 600
Washington, D.C. 20037
Counsel for The Ericsson Company

Jeffrey L. Sheldon
General Counsel
UTC, The Telecommunications Association
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Leonard S. Kolsky
Vice President and Director of
Global Telecommunications Relations
Janet C. Ernest
Manager, Regulatory Relations
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005

Joseph P. Markoski
Brian J. McHugh
Squire, Sanders & Dempsey
1201 Pennsylvania Avenue, N.W.
Post Office Box 407
Washington, D.C. 20044
Counsel for The Boeing Company

David Flinkstron, President
Mark E. Crosby, Acting Secretary/Treasurer
Land Mobile Communications Council
1110 N. Glebe Road
Suite 500
Arlington, Virginia 22201

Thomas J. Keller
Lawrence R. Sidman
Sari Zimmerman
Verner, Liipfert, Bernhard, McPherson
and Hand, Chartered
901 15th Street, N.W.
Suite 700
Washington, D.C. 20005

John A. Prendergast
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037
Counsel for Alarm Industry Communications Committee
Counsel for American Automobile Association

William K. Keane
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005
Counsel for International Taxicab and Livery Association

Wayne V. Black
Joseph M. Sandri, Jr.
Keller and Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Counsel for the American Petroleum Institute

Jeffrey H. Olson
Diane C. Gaylor
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036
Counsel for Nippon Telegraph and Telephone Company

A handwritten signature in black ink, appearing to read "W. J. B. Buford". The signature is written in a cursive style with a horizontal line underneath the name.