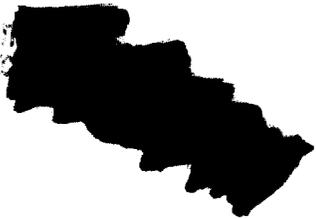


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY



In The Matter of)
)
Amendment of Part 90 of the)
Commission's Rules Concerning)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)
)
Implementation of Sections 3(n) and 322)
of the Communications Act)
Regulatory Treatment of Mobile Services)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)
800 MHz SMR)

PR Docket No. 93-144
RM-8117, RM-8030
RM-8029

GEN Docket No. 93-252

PP Docket No. 93-253

To: The Commission

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REPLY COMMENTS OF DUKE POWER COMPANY

Duke Power Company ("Duke"), by its attorneys, in accordance with section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission" or "FCC"), hereby respectfully submits the following Reply Comments in response to the Commission's invitation in the above-captioned proceeding.¹ Duke's wide-area private 800 MHz system serves as Duke's primary lifeline telecommunications system, and Duke remains concerned with the impact the Commission's actions and its spectrum reallocation plan posited in this proceeding may have on Duke's facilities.

¹ 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; Implementation of Sections 3(n) and 322 of the Communications Act - Regulatory Treatment of Mobile Services, GN Docket No. 93-252; Implementation of Section 309(j) of the Communications Act Competitive Bidding; First Report and Order ("First R&O"), Eighth Report and Order ("Eighth R&O"), and Second Further Notice of Proposed Rulemaking ("2nd FNPRM" or "FNPRM").

I. PRELIMINARY STATEMENT

1. Duke is a major public utility which provides electric power throughout the Piedmont and Western Sections of North and South Carolina. Duke is responsible for providing electric power to approximately 1.8 million customers throughout a 22,000 square mile service area. Over time and on the basis of its experience with the provision of electric power services, Duke has learned that a reliable and internally controllable private telecommunications system is an absolute necessity to assure that its provision of power may be performed in a safe and efficient manner. Accordingly, Duke has expended several million dollars on its private wide-area 800 MHz system, which encompasses over 41 base and/or mobile relay sites, 4,300 mobile radios, 850 portable radios, 255 control stations and three main dispatch console systems. Duke's system now operates on multiple frequency assignments in the "Upper 200" channels which the Commission tentatively plans to auction for wide-area operations. Specifically, Duke's system interdependently operates on channels encompassing Economic Areas ("EAs") number: 18 (Winston-Salem, N.C.), 19 (Durham, N.C.), 23 (Charlotte, N.C.), 24 (Columbia, S.C.), 41 (Spartanburg/Greenville, S.C.), 42 (Hendersonville, N.C.), and 46 (Hickory, N.C.).

2. Duke's current system operates on a mix of channels from the various 800 MHz frequency pools. Approximately half of Duke's total of 63 channels authorized for operation in its present system, are located in the "Upper 200" channels which the Commission proposes to auction for wide-area commercial systems. In its previous Comments filed in this proceeding, Duke expressed its general support for several of the Commission's proposals. Nevertheless, Duke expressed reservations about the Commission's general treatment of Private Mobile Radio

Service ("PMRS") licensees as well as the Commission's proposal to open the General Category Channels exclusively to commercial operations. Duke also expressed concern about the Commission's proposed incumbent licensee system relocation timetable, definition of "comparable" facilities, and incumbent migration cost compensation plan, as well as the proposed "good faith" negotiation standard. Duke is pleased to note that there is substantial support on the record from other commentors expressing similar concerns. Duke therefore reiterates that the Commission must take particular steps to ensure the continued viability of critical PMRS operations and to assure those incumbent licensees facing relocation that they will be treated fairly and not suffer undue system disruptions during any transition process adopted.

II. REPLY COMMENTS

3. Duke is pleased to see that several other participants generally support Duke's position on every point raised in its Comments. While the Commission's move toward the auctioning of spectrum in the 800 MHz range is understandable because of Congressional desires to generate revenue, the record overwhelmingly supports fair treatment of all incumbents. Several parties particularly support special allowances for licensees of systems which serve critical public needs and operate on a private basis.

A. The Commission Must Act To Ensure the Survival of PMRS Systems.

4. Numerous commentors agree with Duke that the Commission has a responsibility to the public to ensure the long-term operational capabilities of PMRS systems which serve vital public needs and which operate on a private and internal basis.² As the Comments make abundantly clear, these systems serve a variety of critical public needs and those functions must continue uninterrupted since in many instances they protect human life and the public's safety. Duke's system along with those of many other PMRS licensees, provides emergency services in support of rapid and safe electric power restoration during accident and/or natural disaster situations. For example, as a direct result of the devastation in Duke's service area in the aftermath of Hurricane Hugo, Duke further expanded its 800 MHz system to make certain that it would always have adequate telecommunications capabilities to handle such emergencies.

5. Thus, Duke is greatly concerned that the problems which could be created by its loss of spectrum from the Upper 200 channels will be exacerbated by an unavailability of workable replacement spectrum, due to the Commission's plan to reallocate the General Category channels strictly to commercial operations. Duke and other PMRS licensees and/or their representative associations agree that the reallocation of the 150 General Category channels

² Comments of: Utilities Telecommunications Counsel ("UTC") at 2-3; Baltimore Gas & Electric ("BG&E") at 2-4; Industrial Telecommunications Association/Telephone Maintenance Frequency Advisory Committee ("ITA/TMFAC") at 4-5; Personal Communications Industry Association ("PCIA") at 18; Entergy Services, Inc. ("Entergy") at 6-7; and General Motors Research Corporation ("GMRC") at 4.

is unwise.³ Should the Commission proceed with auctions of the Upper 200 channels and ultimately auction the general category and lower 80 channels as well, it would leave practically no spectrum for future PMRS system needs. In most areas, replacement spectrum is in extremely limited supply, if available at all. The Commission must, at a minimum, address the needs of PMRS systems for future spectrum requirements to meet vital public needs. This could be done, in part, by making the General Category channels available to PMRS licensees exclusively, as a spectrum safeguard for future needs, and by allowing no further intercategory sharing of Industrial/Land Transportation Pool frequencies.

B. The Commission Must Ensure That Its Relocation Policies Afford Incumbent PMRS Licensees with Adequate Protection for Their Operations.

6. Duke is pleased to note that there is quite substantial support among the commentors for expansion and/or clarification of the Commission's transition proposals to ensure that incumbent licensees are treated fairly and do not experience significant service disruptions. Duke notes support for its proposal to modify the transition period and again reiterates that the Commission should adopt a two year voluntary/one year mandatory relocation approach.⁴ Clearly, large scale systems such as Duke's will face serious relocation difficulties due to the complexities presented by wide-area system migration, which likely will feature negotiations with

³ Those commentors listed above at footnote 2, generally oppose reallocation.

⁴ Comments of: ITA/TMFAC at 11; Southern Company ("Southern") at 17.

multiple Economic Area ("EA") licensees. The Commission must ensure that adequate time is given to incumbent licensees for an orderly and seamless transition.

7. Duke notes consistent support for the concept of required multi-party negotiations to ease transition burdens for incumbent licensees.⁵ Duke remains particularly concerned about this aspect of the Commission's transition proposal because as is demonstrated in Exhibit I (attached), migration of Duke's system will involve negotiations covering seven (7) EAs. As each EA will have three (3) licensees and Duke's system migration must accommodate the Duke system's regional channel reuse plan, it is obvious that system relocation will present serious difficulties necessitating joint multi-party migration negotiations. Many commentors also express support for requiring that relocation be required to encompass an entire system to avoid "cherry picking" of channels by EA licensees.⁶ There is also practically universal support for the Commission's expansion of its definitions concerning those system relocation costs which would be compensated by the EA licensee, as well as for an expansion of the general provisions encompassing the "comparable facilities" elements, to guarantee that incumbents receive adequate compensation for their move and end up with replacement facilities which provide identical or improved replacement telecommunications capabilities.⁷ Duke agrees that it is

⁵ Comments of: SMR Systems, Inc. ("SMRS") at 3; Digital Radio, L.P. ("Digital") at 3; Industrial Communications and Electronics ("IC&E") at 3-4; and Genesee Communications ("Genesee") at 2.

⁶ Comments of Centennial Telecommunications, Inc. ("CTI") at 6; IC&E at 3-4; US Sugar ("USS") at 5-6; PCIA at 15; and Consumers Power ("Consumers") at 7.

⁷ Comments of: Centennial at 8-9; Digital at 4, 6; UTC at 9-10; Keller at 4-5; IC&E at 8; Ericsson Corporation ("Ericsson") at 2-4, USS at 9-11; PCIA at 23-24 and Counsel of Independent Communications Suppliers ("CICS") at 6.

incumbent upon the Commission to ensure that all costs of migration are compensated, that the replacement facilities are acceptable and that the transition is seamless. Along with other commentors, Duke seeks clarification and/or assurance from the Commission that all the foregoing conditions will be met. Duke also joins other parties in seeking the Commission's assurances that any and all incumbent relocation policies, including the proposal that no second migration would be required for incumbent licensees who move to alternative spectrum assignments, will fully apply to PMRS licensees.⁸ Duke strongly disagrees with any proposal which would impose a short-term deadline requirement for incumbent licensee responses to system migration offers from EA licensees. Proper analysis and response to system migration notices and/or proposals for large scale complex systems, especially those with critical response and performance requirements, will not be possible in a truncated time frame.⁹

8. Duke also notes that there is significant concern regarding the proposed "good faith" element in the negotiation process.¹⁰ Duke continues to believe that the Commission's proposed "good faith" element is unworkable, as every system is unique, and a "specific but universal" definition of "comparable facilities" cannot be established. Where an incumbent licensee makes itself reasonably available for discussions and negotiations with EA licensees, good faith on the part of the incumbent licensee should be presumed, absent a specific showing of efforts to abuse or circumvent the Commission's relocation policies.

⁸ Comments of: UTC at 15 and ITA/TMFAC at 7.

⁹ Comment of American Mobile Telecommunications Association ("AMTA") at 10.

¹⁰ See eg. Comments of: SMRS at 8; Digital at 7-8; and UTC at 10-11.

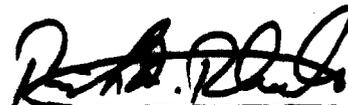
9. The record also shows near unanimous support for the Commission's spectrum disaggregation and partitioning proposals. Duke continues to believe that these proposals will ensure efficient use of the spectrum and encourage flexibility in system migration activities. Accordingly, Duke believes that the Commission should adopt these proposals.

III. CONCLUSION

10. Regardless of the Commission's apparent desire to auction 800 MHz spectrum for commercial mobile radio operations, the Commission's policies must clearly provide that private telecommunications systems such as Duke's can continue to serve vital public needs without undue hindrance or interruption. The Commission must make adequate spectrum available for the continued and future operation of such private non-commercial systems. The record in this proceeding supports adoption of such policies and also supports Commission adoption of a transition plan which would ensure that migrating licensees are made whole in terms of both replacement system facilities and financial compensation for all activities associated with system migration.

WHEREFORE, THE PREMISES CONSIDERED, Duke Power Company respectfully requests that the Federal Communications Commission act in this proceeding in a manner fully consistent with the views expressed herein.

Respectfully submitted.
DUKE POWER COMPANY

By: 
Rick D. Rhodes

By: 
Michelle A. McClure

Irwin, Campbell and Tannenwald, P.C.
1730 Rhode Island Avenue, NW
Suite 200
Washington, D.C. 20036
(202) 728-0400

Its Attorneys

Dated: March 1, 1996

CERTIFICATE OF SERVICE

I, Vanessa N. Duffy, do hereby certify that I have, this 1st day of March, 1996, caused to be sent by hand delivery copies of the foregoing " Reply Comments of Duke Power Company" to the following:

Rudolfo Baca, Esq.
Office of Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Lisa Smith, Esq.
Office of Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Suzanne Toller, Esq.
Office of Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

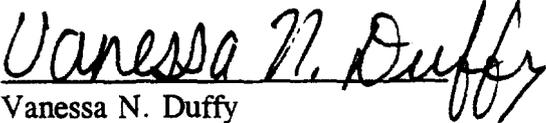
David R. Siddall, Esq.
Office of Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Ruth Milkman, Esq.
Office of Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Michelle Farquhar, Esq.
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind Allen, Esq.
Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

D'Wana R. Speight, Esq.
Office of the Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554


Vanessa N. Duffy