

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

RECEIVED

MAR - 1 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the)	PR Docket No. 93-144
Commission's Rules to Facilitate)	RM-8117, RM-8030
Future Development of SMR Systems)	RM-8029
in the 800 MHz Frequency Band)	
)	
Implementation of Section 3(n) and)	GN Docket No. 93-252
322 of the Communications Act)	
Regulatory Treatment of Mobile)	
Services)	
)	
Implementation of Section 309(j))	
of the Communications Act -)	PP Docket No. 93-253
Competitive Bidding)	
800 MHz SMR)	

To: The Commission

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS

Skyline Communications (Bryan, Texas), Communications Associates (Springfield, Missouri), Atlantic Communications (Bangor, Maine), Didier Communications Services, Inc. (Fort Smith, Arkansas), A & W Communications (Oxford, Mississippi), Gateway Communications (Wichita, Kansas), Bay Electronics (Sturgeon Bay, Wisconsin), Ka-Comm, Inc. (Salina, Kansas), 21st Century Wireless Group, Inc. (Minneapolis, Minnesota), Business Radio Products (Frederick, Maryland), Radio Communications Company (Cary, North Carolina), Anderson Communications (Oxford, Mississippi), Rayfield Communications (Springfield, Missouri), Parkinson Electronics Company (Levelland, Texas), Leonard Systems (Schenectady, New York) and Speed-Net (Mid-Atlantic)(hereinafter "Joint Operators"), through counsel, hereby respectfully file their Reply Comments in

By: _____

Date: _____

CA5

response to the Comments filed concerning the Second Further Notice of Proposed Rule Making ("2nd FNPRM") issued by the Federal Communications Commission ("FCC") in the above-captioned proceeding.

I. BACKGROUND

Each of the Joint Operators has participated in earlier stages of this proceeding. Each Joint Operator is currently the licensee or manager of 800 MHz spectrum in various parts of the country, and each has been in the radio business for many years. Thus, the Joint Operators are not speculators or large companies with a significant amount of resources to lobby the Commission.¹

In essence, the Joint Operators are the typical 800 MHz SMR Operators, who for years has attempted to live by the Commission's Rules and maintain a standard of living while providing customers with professional and personalized service. Some of the Joint Operators even compete in the marketplace against one another. However, they have joined together in this filing to inform the Commission of the difficulties which this proceeding has imposed on their businesses, and request rapid Commission action in accordance with the views expressed herein.

¹21st Century Wireless Group, Inc. ("21st Century") is a group of investors which has purchased operating systems in Minnesota and in the southern portion of the United States. The purchased systems have each been operating for years with thousands of mobile units, and 21st Century has included the original system operators in the operating team assembled to operate the combined system.

RECEIVED

MAR - 1 1996

II. COMMENTS

It is the view of the Joint Operators that the Commission for the past two years has coddled to the interests of speculators and been mesmerized by the mantra of auctions no matter what the costs to the industry. Thus, the Commission has significantly delayed publication of the so-called "Goodman/Chan" Order in the Federal Register, resulting in hundreds of channels being warehoused for years by speculators with no real intention of constructing. And, in this proceeding, the Commission has decided to impose auctions for the Upper 200 SMR Pools and proposed similar treatment for the "Lower 80" SMR Pool channels and General Category channels without any valid rationale or due consideration of the impact on incumbent operators.

Although the Joint Operators strongly disagree with the Commission's actions in this proceeding to date, there is a tremendous need to "get on with business". The Commission's failure to process applications in a timely matter and the subsequent application freeze has seriously damaged the businesses of every independent SMR operator.² Continued freezes and

²The SMR industry cannot be blamed for the Commission's application backlog. The Commission over the past several years has repeatedly piled additional licensing burdens on its staff in Gettysburg, Pennsylvania by reallocating application processing duties from Washington, D.C. to Gettysburg. However, such re-deployment has been without the allocation of any additional human or computer resources for the Gettysburg staff. To require the overtaxed staff in Gettysburg to continuing process more applications for additional services without any additional resources was poor planning on the Commission's part and created suffering for all applicants as well as the Commission's staff. Further, the Commission has encouraged the filing of thousands of purely speculative applications as the result of: (1) its failure

regulatory uncertainty only further impedes the ability of legitimate business operators to make business plans.

The delay in this proceeding has also impacted system customers. As operators are unable to make business plans for system upgrade and product enhancements, customers have been forced to delay acquiring new services offering from SMR Operators. Some customers have left stalled SMR systems for other service offerings, further diminishing the ability of legitimate operators to compete in the wireless marketplace. SMR systems have the ability to bring to targeted customer bases high quality, feature-rich dispatch and messaging services, but the regulatory uncertainty of this proceeding has halted many system upgrades and caused manufacturers to delay bringing new products to the SMR market. In short, this proceeding is choking the legitimate SMR industry.

The amount of time spent by independent operators during the past year organizing and lobbying the Commission has been to the detriment of maintaining and growing the businesses of these companies. No matter what an operator's "party affiliation", the money and time which has been expended on this proceeding only serves to advance the business interests of non-operators. To further prolong this agony only makes any rules which are created in this proceeding more difficult to cope with.

to timely process Finder's Preference applications; (2) its encouragement of the filing of purely speculative applications by granting extended implementation requests for new systems without any justification whatsoever in the request; and (3) its failure to timely revoke grants for unconstructed systems.

A. The FCC Must Issue Lower Band Licenses Without Auctions

The Joint Operators believe that the Commission has now been presented with an opportunity to make a bearable situation out of the nightmare which has typified this proceeding. The Joint Operators have reviewed and support the Comments filed by the Personal Communications Industry Association ("PCIA") on February 15, 1996. It is the Joint Operators understanding that the American Mobile Telecommunications Association ("AMTA"), SMR Won, Nextel Communications, Inc. ("Nextel"), Pittencrief Communications, Inc. ("Pittencrief") and E.F. Johnson have filed Comments which generally mirror PCIA's proposal from January of 1995, specifically that Lower 80 SMR Pool and General Category channels should be made available for geographic licensing by incumbent operators on a channel-by-channel basis without auctions.³

The Joint Operators support assigning geographic licenses for the Lower 80 SMR and General Category channels through a conversion process without auctions, and the Joint Operators are firmly convinced that the Commission can bring this part of the proceeding to a rapid conclusion by recognizing the impossibility of auctions in the lower bands. Further, by maintaining open eligibility for the General Category channels, as suggested by PCIA, the Commission may be able to satisfy the needs of users and user groups and forestall additional attempts to further delay this proceeding.

³See, Comments of Nextel Communications, Inc. ("Nextel") at 12; American Mobile Telecommunications Association, Inc. ("AMTA") at 19; SMR Won at 10; E. F. Johnson at 8; Pittencrief Communications, Inc. at 8.

B. Comparable Facilities And "Re-justification"

The Joint Operators also support the comparable facilities proposals made by PCIA. However, the Joint Operators believe that the Commission's efforts, and those of the industry, will be frustrated if the Commission fails to closely review the extended implementation "re-justification" which must be filed by certain licensees pursuant to the First Report and Order.

The Joint Operators do not wish to impede the genuine efforts of legitimate SMR operators to convert their systems to advanced technology, whether that technology is digital or advanced analog. However, the Commission must not allow warehousing of spectrum by fly-by-night organizations seeking a quick sell of thousands of channels acquired through the mass production of FCC Form 574s in a variety of "friendly" names. Therefore, the Joint Operators request that the Commission reject all extended implementation "re-justifications" which are not based upon an underlying analog SMR system with an existing customer base seeking to expand or convert their systems to advanced technologies.

III. CONCLUSION

WHEREFORE, the premises considered, Skyline Communications, Ka-Comm, Inc., Communications Associates, 21st Century Wireless Group, Inc., Atlantic Communications, Anderson Communications, Radio Communications Company, Business Radio Products, Rayfield Communications, Bay Electronics, Didier Communications Services, Inc., A & W Communications, Parkinson Electronics Company, Gateway Communications, Leonard Systems and Speed-Net request that the

Commission modify its proposed rules for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

**SKYLINE COMMUNICATIONS
COMMUNICATIONS ASSOCIATES
ATLANTIC COMMUNICATIONS
RAYFIELD COMMUNICATIONS
BAY ELECTRONICS
RADIO COMMUNICATIONS COMPANY
KA-COMM, INC.
DIDIER COMMUNICATIONS
SERVICES, INC.
BUSINESS RADIO PRODUCTS
A & W COMMUNICATIONS
21ST CENTURY WIRELESS GROUP, INC.
ANDERSON COMMUNICATIONS
PARKINSON ELECTRONICS COMPANY
GATEWAY COMMUNICATIONS
LEONARD SYSTEMS
SPEED-NET**

By: 
Alan S. Tilles, Esquire

Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

Date: March 1, 1996