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IRWIN, CAMPBELL & TANNENWALD, P.C.
ATTORNEYS AT LAW
1730 RHODE ISLAND AVENUE N.W.
SUITE 200
WASHINGTON, D.C. 20036
(202) 728-0400
FAX (202) 728-0354

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David A. Irwin
(202) 728-0401 Ext. 102

August 23, 1996

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

DOCKET FILE COPY ORIGINAL

Re: GN Docket No. 96-113
In re Section 257 proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses

Stop Code 1170

Dear Mr. Caton:

Transmitted herewith and filed on behalf of SaMComm, Inc. and Big Sky Teleconferencing, Ltd., are an original and ten (10) copies of Comments filed in response to the Commission's Notice of Inquiry in the above captioned matter.

If you have any questions concerning this matter, please contact the undersigned.

Very truly yours,

David A. Irwin

David A. Irwin

Encl.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
	)	
Section 257 Proceeding to	)	
Identify and Eliminate	)	GN Docket No. 96-113
Market Entry Barriers	)	
for Small Businesses	)	

To: The Office of the Secretary
Stop Code 1170

COMMENTS OF SAMCOMM, INC. AND BIG SKY TELECONFERENCING, LTD.

1. These Comments are filed on behalf of SaMComm, Inc., ("SaMComm") and Big Sky Teleconferencing, Ltd., ("Big Sky") in response to the Commission's Notice of Inquiry ("NOI") in the above captioned proceeding, FCC 96-216, released May 21, 1996.

2. SaMComm is a recently formed wholly-owned subsidiary of Moultrie MultiCorp, Inc., which is the sole shareholder of Moultrie Independent Telephone Company, also a wholly-owned subsidiary of Moultrie MultiCorp, Inc. SaMComm has applied to the Illinois Commerce Commission for a Certificate of Exchange Service Authority to terminate sent-paid intrastate traffic within the study area of Moultrie Independent Telephone Company in Illinois. SaMComm also proposes to terminate interstate traffic in a similar manner. SaMComm will have its own switch and NXX numbers.

3. Big Sky is an affiliate of Tri-County Telephone of Wyoming and Tri-County Telephone West. Big Sky intends to become an operating competitive access company located in Wyoming providing, among other things, interstate terminating telephone access service subject to the Commission's jurisdiction.

4. The principals of SaMComm and Big Sky are in contact with telemarketing entities that desire to terminate large volumes of sent-paid conference call traffic in each of their service

areas. SaMComm and Big Sky were established, in this era of rapid, emerging competition, in order to shield their parent corporations, affiliates and customers from the potential risks associated with competitive business opportunities.

5. SaMComm and Big Sky applaud the Commission's recognition that its current rules are not sufficient to ensure that small businesses, like SaMComm and Big Sky, are able to compete effectively in providing telecommunications services. As alternate access providers, SaMComm and Big Sky's experiences have identified two major barriers small companies face in attempting to enter markets and compete. These barriers come from larger telephone companies and the Commission's inability to process Formal Complaints in a timely manner or provide expeditious injunctive relief where warranted.

6. For example, it has come to SaMComm and Big Sky's attention that one large IXC in particular ("AT&T"), has been engaging in unlawful self help measures in an attempt to cripple a small start-up telephone company. AT&T has failed to provide interconnection to its network, in violation of § 251(a)(1) of the Telecommunications Act of 1996, has blocked its own customers from dialing the working telephone numbers operated by these small companies, and threatened to withhold payments for terminating access charges generated under effective tariffs filed with the Commission; AT&T appears to believe it is "Big Brother" -- a national censor.

7. Although some would argue the monopolistic era of yesteryear has passed and competition has taken hold of the United States' telecommunications infrastructure, small start-up companies like SaMComm and Big Sky remain in jeopardy as long as large companies like AT&T seek to "shape" competition rather than to allow ordinary market forces and customer demand to operate independently. Small new entrants may be thwarted from entering the telecommunications industry simply because larger companies have the financial wherewithal to swamp small companies when litigation becomes necessary. If a small company is just getting by, how can it

file and prosecute a Formal Complaint with the Commission and then wait, for what could be years, before the Commission issues relief? The Commission should have injunctive-type procedures similar to the courts in order to respond to requests for interim, emergency relief pending its ultimate ruling on a Formal Complaint. The Commission should have and implement procedures to protect the status quo.

8. In addition, if the Commission were to streamline its Formal Complaint process and make available expeditious review of Formal Complaints, especially for those Complaints filed by small businesses, small businesses would be less subject to intimidating and predatory actions by large companies.

9. SaMComm and Big Sky are aware that the Telecommunications Act of 1996 amends the Communications Act of 1934 by decreasing the amount of time within which the Commission must conclude its investigation of a Formal Complaint from 12 months to 5 months.[1] However, in the past, the Commission has routinely requested complainants to waive the 12 month requirement and SaMComm and Big Sky assume it will do so again.[2] There are currently 385 formal complaints pending before the FCC for periods ranging from 17 months to 9 years. For example, Graphnet, Inc. has had a complaint pending against now bankrupt Western Union for more than eight years.[3] It was reported in *National Communications Ass'n v. AT&T*[4] that the FCC takes anywhere from two to five years to act on a Formal Complaint, and since that decision, the FCC has been burdened by new Congressionally imposed deadlines for a wide

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[1] 47 U.S.C. § 208(b)(1).

[2] FCC June 6, 1996 list of pending complaints.

[3] FCC File No. 88-66.

[4] *National Communications Ass'n v. AT&T* 46 F.3d 220, 225 (2d Cir. 1995).

variety of actions under the 1996 Act. Indeed, the Commission may well need additional time to act on Formal Complaints, not less.

10. SaMComm and Big Sky respectfully submit that the Commission's failure to act on Formal Complaints in a timely manner or to effectively offer interim, injunctive-type relief are major barriers to entry for small businesses. The Commission's Complaint processes are essential to ensure that small businesses are not unduly and illegally forced from the market by large companies. Clearly, large companies know they can take advantage of the Commission's lag time in responding to complaints and that they are able to force small companies out of the market before they have had the opportunity to be heard by the Commission.

11. SaMComm and Big Sky respectfully request that the Commission analyze the processes by which it reviews Formal Complaints in order to ensure that these processes do not impede small businesses from providing telecommunications services and that it promulgate specific rules through which interim, injunctive-type relief may be obtained. The public interest and welfare of small company entrants into competitive telecommunications markets warrants no less.

Respectfully Submitted

David A. Irwin

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

Counsel for SaMComm Inc. and
Big Sky Teleconferencing, Ltd.

August _____, 1996