DAVID M. KELLEY
3615 WILD IVY COURT
INDIANAPOLIS, IN 46227

RECEIVED
NOV 14 1996
FCC MAIL ROOM

November 12, 1996

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

RE: Notice of Proposed Rule Making in WT Docket No. 96-199

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

It is requested that the comments contained herein be considered in connection with the FCC's above-referenced proceeding in which the FCC proposed to eliminate the finder's preference program in the 220-222 MHz band. I am deeply concerned with and troubled by the FCC's proposal to dismiss pending finder's preference requests in order to facilitate the FCC's spectrum auction process. The FCC's justification for its proposal to dismiss pending finder's preference requests is entirely disingenuous and blatantly ignores the extensive efforts expended by hundreds of "finders" who, at the FCC's urging and in good-faith reliance on the FCC's rules, went out and identified violations of the FCC's station construction and operation rules. The FCC is obligated to decide each of the pending finder's preference requests on their merits. To apply the proposed rules retroactively by dismissing pending finder's preference requests without consideration would be entirely unjust.

I currently have a finder's preference request on file with the FCC, compliance file number 94F507. This request was filed in full compliance with the FCC's rules applicable to the finder's preference program. The preparation and filing of this request required me to expend a significant amount of time, effort and resources, including Commission and field research, filing fee, monitoring equipment, surveyor and attorney fees . Despite these efforts, my finder's preference request has languished at the FCC for over twenty five (25) months, and now the FCC has the audacity to suggest that it might simply dismiss it out of hand. Such action would be repugnant to even the lowest standard of decency, fairness, or justice.

I have no major problem with the FCC's proposal to eliminate the finder's preference program in the 220-222 MHz, 470-512 MHz, or 800/900 MHz bands, so long as such rule changes are applied prospectively. But the FCC's intentions appear to go way beyond that. Specifically, in Paragraph 11 of the NPRM, the FCC proposes "to retain the discretion to dismiss pending finder's preference requests for <u>any services in any frequency bands</u> in which we decide to eliminate the finder's preference program as a result of this

No. of Copies rec'd 0+4
List ABCDE

rulemaking proceeding." The broad language and lack of specificity in the foregoing provision is extremely unsettling, especially when the scope of the FCC's proposal could easily be interpreted -- or adopted -- to include the FCC's right to dismiss, without consideration, pending finder's preference requests in the 470-512 MHz and 800/900 MHz bands. Indeed, the language in Paragraph 11 of the NPRM does not specifically limit the FCC's discretion to dismiss pending finder's preference requests to those in the 220-222 MHz band.

In support of its proposal, the FCC states in its NPRM that "it may not serve the public interest to grant any pending finder's preference request" and claims that "persons with finder's preference requests on file would not be substantially harmed (by having their finder's preference request dismissed) because there would be an opportunity to apply for the unused frequencies once they become available for licensing." It is clear from the foregoing, that the FCC is overlooking the significant amounts of time, effort and resources that many finder's preference program participants have expended. It is worth reminding the FCC that it was the FCC itself who urged parties to identify "warehoused" frequencies and other licensee violations of the FCC's station construction and operation rules, and prepare and file corresponding finder's preference requests.

From the finder's perspective, it would be totally unfair and contrary to the public interest for the FCC to arbitrarily dismiss valid finder's preference requests and refuse to award earned preferences, only to capitalize on the finder's efforts by taking the unused frequencies and making them available for auction. Notwithstanding the FCC's claim, finder's who "lose" preferences as a result of FCC dismissal actions would be substantially disadvantaged by having to participate in spectrum auctions in attempt to win rights to frequencies that they would have otherwise been awarded through the finder's preference program. It would be similarly inequitable for the FCC to allow licensees who have violated the FCC's station construction and operation rules to retain the unused frequencies identified by finders.

For the foregoing reasons, I strongly urge the FCC to refrain from arbitrarily dismissing any of the finder's preference requests now pending at the FCC. Any rules adopted in this proceeding should be applied only prospectively. The many finder's preference program participants who, like myself, adhered to the FCC rules and proceeded in reliance of those rules, deserve to have their finder's preference requests considered and decided on their merits.

David M Kelley