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Federal Communications Commission
Office of Secretary

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

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service	)	**PR Docket No. 89-552**
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	**GN Docket No. 93-252**
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Implementation of Section 309(j) of the Communications Act-Competitive Bidding, 220-222 MHz	)	**PP Docket No. 93-253**

To: The Commission

COMMENTS OF COMTECH COMMUNICATIONS, INC.

ComTech Communications, Inc. ("ComTech" or the "Company"), by its attorneys, pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission") hereby submits its comments in response to the Fifth Notice of Proposed Rule Making ("Fifth Notice") adopted in the above referenced proceeding in which the Commission proposes rules by which existing ("Phase I") nationwide and future ("Phase II") licensees of 220-222 systems may partition and disaggregate their licenses.[1]

[1] In the Matter of Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rulemaking, FCC 97-57 (released March 12, 1997).

I. INTRODUCTION

ComTech Communications, Inc., headquartered in northern California, is one of the most active legitimate participants in the 220 MHz industry. It has already initiated the construction and operation of 220 MHz facilities in many locations. Its affiliate, ComTech Nationwide Communications, Inc., holds one of four Phase I nationwide 220 MHz authorizations. In addition to its nationwide operations, ComTech has acquired several local 220 MHz stations and manages facilities licensed to other entities.

Through the construction and operation of many 220 MHz systems to date, ComTech has demonstrated a commitment to the nascent 220 MHz industry. In addition to placing in operation local systems, ComTech has already begun to construct and operate the facilities associated with its nationwide authorization. ComTech expects to continue to be a significant participant in the 220 MHz arena.

The Fifth Notice asks whether the Commission should permit full partitioning and disaggregation of 220 MHz licenses. The Commission specifically inquires about how partitioning and disaggregation should be permitted for Phase I nationwide 220 MHz licensees. ComTech wishes to have the flexibility to partition or disaggregate its authorization. Accordingly, the proposed regulatory scheme may have a dramatic impact on ComTech's future operations. ComTech is pleased, therefore, to have this opportunity to submit the following comments.

COMMENTS

A. Available License Area

The Commission proposes that it take a flexible approach to partitioned areas, similar to what it adopted for broadband personal communications service ("PCS") licensees. It

recommends that Phase I nationwide and covered Phase II licensees be permitted to partition based upon any license area defined by the parties.

ComTech supports the Commission's proposal. There are no technical or other issues unique to the 220 MHz service that might impede the adoption of this flexible approach. While the propagation characteristics of 220 MHz systems are certainly different than those of PCS, those differences will be taken into account in the arrangements made between the licensee and the partitionee. As the Commission concluded with respect to PCS, limiting partitioning to those areas defined by county lines or other geopolitical boundaries "may not be reflective of market realities and may otherwise inhibit partitioning."[2]

B. Minimum or Maximum Disaggregation Standards

The FCC asks whether, if it permits disaggregation, minimum disaggregation standards are necessary.[3] It also inquires whether it should adopt a standard that would be flexible enough to encourage disaggregation while providing a standard, consistent with its technical rules, and by which it would be able to track disaggregated spectrum and review disaggregation proposals in an expeditious fashion.[4]

ComTech urges the Commission not to adopt minimum disaggregation standards, similar to the approach it took in the Partitioning Report and Order. As the Commission noted there: " We find that requiring parties to obtain disaggregated spectrum in a predetermined amount...may result in parties obtaining more spectrum than they need, leaving some spectrum unused, and

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[2] Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, WT Docket No. 96-148, Implementation of Section 257 of the Communications Act-Elimination of Market Entry Barriers, GN Docket No. 96-113, *Report and Order and Further Notice of Proposed Rule Making,* FCC 96-474 (released December 20, 1996) ("Partitioning Report and Order") at para. 23.

[3] Fifth Notice at para. 326.

[4] *Id.*

may foreclose some parties from using disaggregation..."[5] ComTech recognizes that some Phase I licensees may be authorized for a single 5 kHz channel pair. Disaggregation may be neither useful for these entities nor administratively manageable for the Commission. Nevertheless, it may be useful for licensees with as few as five channels (25 kHz) to be able to disaggregate their spectrum. Accordingly, ComTech recommends that the Commission permit disaggregation for any licensee of five channels or more.

This disaggregation capability may become particularly important for licensees with as few as five channels, in light of the Commission's decision to permit 220 MHz licensees to operate fixed or paging systems. For example, licensees authorized to operate with five contiguous channels may be able to provide fixed or paging services with fewer than their authorized 25 kHz bandwidth. Similarly, these licensees may wish to employ one half of their spectrum (either the send or receive segment) for paging. The remaining 25 kHz could also be employed usefully for paging (or other) purposes unless a minimum disaggregation standard was imposed. Nevertheless, ComTech would expect that licensees of disaggregated spectrum would comply with all applicable technical standards, including bandwidth and emission mask limits.

Because the current channelization scheme envisions the use of 5 kHz channels, ComTech recommends that disaggregation be permitted consistent with the current channelization scheme. ComTech recognizes that the Commission has wisely permitted licensees to combine channels to employ bandwidths of greater than 5 kHz in a contiguous fashion. Nevertheless, ComTech believes that disaggregation along the current channelization scheme, with a minimum of 5 kHz, will accommodate the administrative needs of the

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[5] Partitioning Report and Order at para.49.

Commission and allow licensees sufficient flexibility to disaggregate in a fashion that will allow the greatest use of the licensed spectrum.

C. Combined Partitioning and Disaggregation

The Commission tentatively concludes that it should permit combined partitioning and disaggregation. ComTech agrees with the Commission's conclusion and recommends that both be permitted in accordance with the parameters discussed above.

D. Construction Requirements

For Phase I non-nationwide licensees, the Commission would permit disaggregation, but not partitioning, after the licensee has met the applicable construction deadline. As the Commission is aware, the time has past for virtually all Phase I non-nationwide licensees to construct their facilities. Accordingly, as a practical matter, the Commission's proposed limitation is largely irrelevant. ComTech generally supports the Commission's proposal and recommends that Phase I non-nationwide licensees be permitted to disaggregate in the manner described above.

The Commission asks whether a Phase I nationwide licensee should be permitted to partition or disaggregate prior to constructing at least 40 percent of its proposed system.[6] The Commission also proposes to permit disaggregation of Phase I nationwide licenses, with the original licensee and the disaggregatee being required to meet the two, four, six and ten year construction requirements imposed on the original licensee. Finally, the FCC questions, in light of the unique geographic coverage requirements imposed on Phase I nationwide licensees, whether geographic partitioning of Phase I nationwide licenses should be permitted, and if such partitioning were permitted, the terms and conditions under which it could occur.

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[6] Fifth Notice at para. 323.

ComTech believes that Phase I nationwide licensees should be able to partition and disaggregate immediately. In its Partitioning Report and Order the Commission recognizes the significant benefits to both partitioning and disaggregation. If consumers and other service providers will benefit from such partitioning and disaggregation (as the Commission correctly assumes in its proposal to allow partitioning and disaggregation for Phase II nationwide licensees), it is axiomatic that the public interest will be served by permitting Phase I nationwide licensees to engage in partitioning and disaggregation as well. Accordingly, Phase I nationwide licensees should not be impeded from partitioning or disaggregating until they have constructed forty percent of their system.

ComTech recognizes that the ability to partition prior to the end of a licensee's 40% construction requirement would necessitate a change in the regulations. The purpose of the construction requirement is to ensure that service is offered to the public. As discussed below, retention of the 40% construction requirement is not necessarily inconsistent with a licensee's ability to partition. Accordingly, the Commission should amend the regulations to permit such partitioning.

In order to ensure that the spectrum is employed to serve the public, the regulations require that Phase I nationwide licensees complete construction in a specified number of markets at various periodic benchmarks. Meeting those construction requirements is not inconsistent with partitioning. The Phase I licensee will have the choice of which areas of the country, if any, it wishes to partition. Accordingly, it could partition many areas of the country and still meet the four, six and ten year construction benchmarks.[7] However, if the FCC's paramount important

[7] ComTech has already met its two year benchmark. It believes that all other Phase I licensees have also met this construction requirement.

goal is to ensure that the spectrum is being used to serve an appropriate number of markets, it could determine if the nationwide system met the construction requirements, by evaluating the markets in which the original licensee and any partitionees constructed. If the original licensee and the partitionees together operated in a sufficient number of markets, the system would be considered to have met the construction requirement.

ComTech therefore recommends that the Commission permit Phase I nationwide license partitioning immediately, but retain the construction requirements on a system-wide basis. Under ComTech's proposal, the Commission would determine, based upon the construction completed by the original Phase I licensee and any partitionees, whether the system met the construction requirements of Section 90.725. Sections 90.725(b) and (c) provide consequences for a Phase I nationwide licensee's failure to meet its construction requirements. If a Phase I nationwide system failed to meet those requirements, both the original licensee and any partitionees would be subject to those provisions. Therefore, if a Phase I nationwide system met its two and four year construction requirements, and failed to meet the six or ten year criteria, a partitioned licensee (as well as the nationwide licensee) would retain authorization for whatever facilities were constructed. If a Phase I nationwide system failed to meet its two or four year construction requirement, both the original licensee (as well as the partitioned licensee) would be provided with an opportunity to convert to non-nationwide channels, as provided in Section 90.625(b) of the rules.[8]

[8] ComTech recognizes that, as a practical matter, there will not likely be any remaining non-nationwide channels for either the nationwide licensee or the partitioned licensee, in light of the impending auction of non-nationwide channels. Therefore, ComTech expects that both the nationwide licensee and the partitioned licensee would lose their authorizations if the nationwide licensee did not meet the two or four year construction requirements. ComTech recommends that the partitioned licensee receive an authorization specifically conditioned on the nationwide licensee's compliance with Section 90.725 of the rules.

ComTech expects that, provided with such flexibility, Phase I nationwide licensees will either retain sufficient geographic coverage to ensure that they meet the coverage requirements themselves or contractually ensure that they, together with the partitionees, meet those requirements.

ComTech strongly disagrees with the Commission's proposal to require disaggregatees to meet a separate construction requirement from the Phase I nationwide licensee. As noted above, ComTech believes that Phase I nationwide licensees and any geographic partitionees should collectively be responsible for meeting the construction requirements of Section 90.725 of the rules. Similarly, Phase I nationwide licensees and any disaggregatees should also collectively be responsible for meeting the construction requirements of Section 90.725 of the rules. ComTech recognizes that the regulations currently require that a Phase I nationwide licensees construct base stations with "five assigned nationwide channels." Regrettably, this wording is fundamentally inconsistent with regulations that permit licensees to use their contiguous spectrum (without five kHz channelization) and offer paging or fixed services, in lieu of their mobile facilities, after meeting their two year construction requirements. Licensees, their partitionees and their disaggregatees may be able to meet the geographic area construction requirements by operating paging or fixed facilities but not construct the five individual channels, as specified in Section 90.725(a) of the regulations.

Accordingly, the Commission should take this opportunity to revise Section 90.725(a) of the rules, so that the requirement to operate five channels expires at the same time as the licensee can offer fixed or paging service. If the Commission takes this action, and adopts ComTech's recommendation that the Phase I nationwide licensee and any partitionees and disaggregatees together be subject to the construction requirements, the Commission will be free to permit

disaggregation after the two year construction benchmark, without imposing a separate construction requirement on the disaggregated licensee.[9] Even after disaggregation, a Phase I nationwide licensee may still, on its own, be able to meet the construction requirements of a revised Section 90.725 of the rules, if it provides paging or fixed services. Nevertheless, the Commission should examine the construction performed by the Phase I nationwide licensee, its partitionees and disaggregatees to determine if the number of markets specified in Section 90.725 of the rules have been constructed. If, together, the Phase I licensee, its partitionees and disaggregatees fail to meet the construction requirements, including the operation of paging and fixed stations, the Commission would be impose the sanctions specified in Section 90.725 of the regulations.

Because ComTech recommends that the current Phase I nationwide licensee and any partitionees, together be responsible for meeting construction requirements (assuming appropriate modification of Section 90.725(a) of the rules), it supports a Phase I nationwide licensee's ability to both disaggregate and partition.

The Commission proposes that Phase II licensees be permitted to disaggregate and partition in the same fashion as PCS licensees, as provided in the Partitioning Report and Order. ComTech supports this approach.

E. License Term, Competitive Bidding Issues, Licensing Issues

ComTech supports the Commission's proposals with regard to the term of partitioned and disaggregated licenses, competitive bidding issues and licensing procedures.

[9] As suggested above, the disaggregatee's rights would be derivative of those of the Phase I nationwide licensee. Accordingly, if a Phase I nationwide licensee failed to meet its four year construction requirement, the disaggregatee could potentially lose its license.

WHEREFORE, THE PREMISES CONSIDERED, ComTech Communications, Inc. submits the foregoing comments and urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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