

ORIGINAL

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

In the Matter of)
)
Replacement of Part 90 by Part 88 to Revise)
the Private Land Mobile Radio Services and)
Modify the Policies Governing Them)
)
and)
)
Examination of Exclusivity and Frequency)
Assignments Policies of the Private Land)
Mobile Services)

PR Docket No. 92-235

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

PETITION FOR RECONSIDERATION

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Dated: May 19, 1997

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SUMMARY OF THE FILING

The Commission left six matters unresolved in its otherwise admirable Second Report and Order. Small Business in Telecommunications believes that the public interest requires that the Commission resolve those matters promptly to make reforming a regulatory success story.

The Commission needs to redefine with particularity the relationship between the frequency coordinator and the applicant. The Commission should make clear that, in the new competitive environment, the coordinator works for the applicant.

On frequencies where competition is not available, the Commission needs to impose stricter requirements on the coordinators. Where competition is not available, the Commission should fulfill its traditional role of adjusting for the absence of competition.

Technical standards are needed to assure reliable coordination. In particular, the Commission should specify that the daily notices which coordinators are to give to one another shall be in a machine readable form.

The time that passed between the Commission's ordering of plans for consolidation of the Radio Services and the release of the Second Report and Order demonstrates that the Commission must make politically difficult decisions itself. Rather than waiting for consensus, the Commission should promptly adopt a plan for use of the former "12.5 kHz offset" channels.

If the frequency coordination field is to be truly competitive, then additional entrants should be accommodated. The Commission should establish objective standards for the certification of new coordinators.

The Commission should adopt a method for authorizing the use of centralized trunking which will be workable in urban areas. A developmental trunked license which can mature into a primary license after a period of non-interference would provide for trunking where it is needed most.

The permissibility of decentralized trunking should be affirmed. The Commission should clarify that decentralized trunking is still permitted without specific authorization, provided that no harmful interference is caused to other licensees.

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PETITION FOR RECONSIDERATION

Small Business in Telecommunications (SBT), by its attorneys, respectfully requests that the Commission reconsider the actions taken in its Second Report and Order (SRO) in the above-captioned matter, _____ FCC Rcd. _____ (FCC 97-61 Released March 12, 1997). In support of its position, SBT shows the following.

SBT's Participation

Small Business in Telecommunications is an organization of businesses in telecommunications, each voting member of which has annual gross revenues of less than 20 million dollars. The Commission's actions in the SRO are of great importance to the members of SBT, because SBT's members rely on use of the Part 90 radio frequencies for their livelihoods and they require the services of the frequency coordinators daily. As each is a small business entity, the Commission is required to take the interests of SBT members into account

in its rule making actions, see, 47 U.S.C. §§257 & 309(j) , and SBT has no doubt that the Commission will take the steps necessary to carry out that mandate.

Introduction

William Shakespeare must have written the SRO, for it so closely embodies the essence of “Hamlet”. SBT is pleased that the Commission has finally turned away from nearly 50 years of an easily administered, but dreadfully inefficient system of frequency allocations, but the Commission has done so timidly, wandering away from decisions which must be made and which can be made only by the Commission if the New Frequency Order is to be successful.

There is much to be said for consensus in some contexts, but the Commission should neither diminish its own authority nor wait for consensus when the public interest would be better served by leadership and certainty. The Commission has left vital decisions unmade, trusting against experience that the Commission may be relieved of the burdens of leadership by asking the parties if they can’t all just get along. Left unfinished in the SRO are the following steps which must be taken if the Commission’s intentions are to be realized:

1. Redefine with particularity the relationship between the frequency coordinator and the applicant.
2. Impose stricter requirements on the coordinators of frequencies where competition is not available.
3. Adopt technical standards for coordinators that will be effective to assure reliable coordination.

4. Adopt a plan for use of the former “12.5 kHz offset” channels.
5. Establish objective standards for the certification of new, competitive frequency coordinators.
6. Adopt a method for authorizing the use of centralized trunking which will make such operation possible in the urbanized areas where trunking is most needed.
7. Affirm the permissibility of decentralized trunking, provided only that no harmful interference is caused to other licensees.

Frequency Coordination

At paragraph 33 of the SRO, the Commission stated that “in consolidating these twenty radio services, we must determine the appropriate role for these coordinators,” SRO at para. 33. To some extent, the Commission made and explained the necessary determinations, but it left unresolved crucial issues concerning the relationship of the frequency coordinating committees and the applicants who pay their fees. In the Commission’s action certifying the frequency coordinating committees, Report and Order, 103 FCC 2d 1093 (1986), the Commission established a system of “monopoly” frequency coordinators and defined them as a “conduit” between the Commission and the applicant. The new structure which the Commission has given to its Private Land Mobile Rules and the business of frequency coordination requires a new definition.

The Commission has made the following crucial changes to the system of frequency coordination:

1. Opened coordination of most of the frequencies to competition.
2. Acknowledged that representativeness of a class of persons is no longer a requirement for the position of frequency coordinator.
3. Given the frequency coordinators new powers in their relationship with the applicant.
4. Concurrently, determined that the procedural protections which apply to an applicant before the Commission do not apply to an applicant in its relationship with a coordinator.

Although proclaiming a new competitive environment, the Commission has established an irrational relationship of unnecessary tension between the coordinator and the applicant. At amended Rule Section 90.175, the Commission has formally given the frequency coordinator the authority to demand certain types of information "when such information is necessary to identify and recommend the most appropriate frequency", and has provided that "applicants bear the burden of proceeding and the burden of proof in requesting the Commission to overturn a coordinator's recommendation," 47 C.F.R. §90.175.

Free to choose among competing coordinators, the applicant should be able to rely on the coordinator's owing its first duty of allegiance to the applicant. Instead, the Commission has authorized the inquiring coordinator to demand an unlimited quantity of information from the applicant and placed the burden of proceeding and the burden of proof on the applicant to overturn a coordinator's recommendation.

The Commission should not place the applicant and the coordinator in a position of always being poised for combat as the result of a mandated structure of divided loyalties. Instead, the Commission should make clear that the competitive coordinator is the agent of the applicant who pays its fee, and owes a fiduciary duty to use its reasonable best efforts in the interest of the applicant. If the coordinator is not to be the agent of the applicant in seeking the most appropriate frequency in the interest of the applicant, then the Commission, and not the applicant should be paying the coordinator's fee.

In the monopoly frequency coordination scheme, in which each coordinator was required to be representative of the eligibles of a certain Radio Service or subcomponent of a Radio Service, then there was some basis for assigning to the coordinator the duty of considering the interests of all of those persons whom it was certified to represent. However, freed of the necessity of representing the interests of any particular group, a coordinator in the new competitive environment should be working only in the interest of each applicant who selects its competitive service offering. Continuing to place the coordinators in a situation of divided loyalty would be unfair to them and unfair to applicants. For those reasons, the Commission should define the relationship between the coordinator and the applicant as one in which the coordinator is the agent of the applicant which selects its service and from whom it receives a fee.

If the Commission is to maintain the combative arrangement which it has adopted, it should provide additional protections for the applicant. If a coordinator demands certain

additional information, the applicant should be able to refuse the request on the basis that it is unnecessary. In such a controversy, the Commission should place the burden of proceeding and the burden of proof on the coordinator to show that the requested information is necessary for the stated purpose of identifying and recommending the most appropriate frequency. In the matter of protesting a coordinator's recommendation, the Commission should withdraw its presumption in favor of the coordinator or should, in the alternative, provide more fully that, once the applicant has presented its position, the burden of proceeding shifts to the coordinator and that, in a contested situation, the coordinator must disclose to the applicant all of its communications with the Commission so that the applicant will have a fair opportunity to prove its case.

Hard upon the heels of the SRO, the Commission released its Memorandum Opinion and Order in the matter of Electrical Engineering Company and PageMart II, Inc., _____ FCC Rcd. _____ (FCC 97-100 Released March 27, 1997) (EEC), in which the Commission held that the Commission's Rules of Practice and Procedure do not apply to applications which are being processed by the frequency coordinators. Although the action in EEC was subsequent to the Commission's action in the above captioned matter, it was based on events occurring in the monopoly coordination environment and the action was taken while that old regime was still in effect. In the new competitive environment, there will be increased pressures on the coordinators to "cut a deal" with one applicant to the detriment of another.¹ If the Commission

¹ This is not to suggest that the coordinators cannot be trusted, but since they have been operating for more than a decade in a more closed environment than the competitive one, applicants may need the security of additional protections.

does not remove the tension which has created between the coordinators by defining an agency relationship between applicant and coordinator, then the Commission should incorporate its rules of practice and procedure to the activities of the coordinators to assure fair treatment for each applicant.

The Commission has established an irrational relationship between the frequency coordinator and the applicant which must be rectified. On the one hand, the applicant is free to select among competitive coordination services and to pay the fee of the coordinator which he selects, but, on the other hand, the coordinator appears to have no responsibility to the applicant other than to recommend "the most appropriate frequency", without an answer to the question of "most appropriate for whom?" Rather obviously, if the applicant is free to select a coordinator on a competitive basis and is obligated to pay for the coordinator's service, the coordinator should be obligated to select the frequency which will be the most appropriate for the applicant and should be required to defend the frequency recommendation against the entire world. Under the scheme adopted in the SRO, however, in the event of a controversy with another coordinator, the applicant's choice of coordinator can be relied upon to take his money, but cannot be relied upon to take his part.²

² Certainly, it must be acknowledged that there will be coordination errors and, in such a case, a coordinator may not be able to defend its coordination. However, in the absence of obvious error, no coordinator should be permitted to compromise the interest of its applicant with the interest of any other person.

The Commission has not established any mechanism by which it will resolve a multi-party controversy involving the applicant and multiple frequency coordinators. In the event of a controversy between the applicant's choice of frequency coordinators and one or more other coordinators, the applicant needs for the Commission to define the applicant's coordinator's duty as progressing the applicant's interest as against the position of any other coordinator. If the Commission does not establish such a duty, there will be too much risk that a coordinator will "sell out" an applicant, taking its money, but not defending its interest against the position(s) of the competing coordinators. In the event that a coordinator protests a coordination, the applicant should be served with copies of any coordinator correspondence concerning its application and the applicant should have the opportunity to submit the controversy to the Commission for resolution.

In a competitive environment, in which frequency coordinators will be coordinating thousands of frequencies with which they have no experience, greater protection is needed for applicants than under the old system. While a coordinator may have known well the characteristics of all of the licensees and applicants in its group of eligibles, there can be no assurance that a coordinator will know anything at all about the business of the total range of applicants who may now select its service. Because the Commission is sending the coordinators into an unknown frequency territory, the Commission should provide the applicant with the level of protection against coordinator error or misbehavior which can be provided only by an agency relationship. For that reason, the Commission should clearly state that the frequency coordinator

performs its work as the agent of the applicant and is responsible for progressing the interests of those who choose its service.

Left unresolved by the SRO was the matter of whether, in the new competitive environment, the coordinators are required to adhere to a schedule of fixed charges and provide their service to all applicants at the same charge, or whether the coordinators will be permitted to negotiate different terms and conditions with various coordination customers. The question is important to small businesses, because if the Commission does not require the frequency coordinators to charge the same fee to all customers, large businesses which file large numbers of applications will be in a position to negotiate lower charges than small businesses which do not have the negotiating leverage of deciding where to place large amounts of coordination business. If a large coordination user can obtain a favorable price, such an advantage would enable the large user to have an unfair competitive advantage in the pricing of its goods and services, as against the market position of small businesses which cannot educe a favorable price from any coordinator. Accordingly, the Commission should require each of the coordinators to establish and adhere to a schedule of fixed charges and to provide services to all applicants at the same charge.

While the Commission has extended to applicants the benefits of competition in coordination for most Industrial/Business frequencies, the Commission reserved coordination of

certain frequencies (hereinafter, the "limited frequencies") to specific coordinators.³ SBT has no objection to that reservation of the limited frequencies, but to extend the benefits of competition to all applicants, the Commission should impose a cap on the charges of the coordinators of the limited frequencies. If the Commission does not tie the charges of the coordinators of the limited frequencies to the charges of the fully competitive coordinators, there is a substantial risk that persons whose frequency choice restricts them to a certain coordinator will have to pay fees which are unreasonably high.⁴ To protect the interests of persons who must rely on the services of the coordinators of the limited frequencies, the Commission should cap the charges of the coordinators of the limited frequencies at the highest charge made by any of the competitive coordinators.

At paragraph 47 of the SRO, the Commission authorized the coordinators to disclose to one another that an applicant's request had been rejected. The only obvious reason that such a communication would ever be made would be to suggest that the second coordinator stand with the first coordinator and deny coordination services. The consequences of allowing such behavior would clearly deprive applicants of the benefits of competition, and, for that reason, the Commission should reverse its position and prohibit the frequency coordinators from disclosing to any person other than the Commission, upon Commission request in a specific

³ The Commission limited coordination of the former Railroad, Petroleum, and Power frequencies to those respective coordinators.

⁴ That is, charges which are substantially higher than the prices which are available in the competitive environment.

instance, that coordination of an application had been refused. In a competitive environment, whether one coordinator has refused to coordinate an application should be immaterial to a different coordinator. If the public is to see the benefits which may flow from competitive frequency coordination, the Commission should not permit collusion between coordinators which would have the inevitable effect of reducing the availability of competitive services. Authorizing the coordinators to collude on a denial of services by disclosing to one another that they had declined a certain coordination request would inevitably diminish their competitive spirit and reduce the extent to which applicants can receive competitive coordination services.

With the end of block allocations, the Commission appears to have recognized at paragraph 34 of the SRO that there is no longer any logic to requiring a frequency coordinator to be representative of any certain group of eligible persons. The Commission has also imposed certain new requirements on the frequency coordinators for cooperation with one another. The Commission has continued to leave to the discretion of frequency coordinators the means and methods by which they make their recommendations. In this new competitive environment, one thing remains missing and that is the procedure by which a new competitor can enter the field based on compliance with objective criteria.

Many of the currently certified frequency coordinators are quite small and the field is one in which small telecommunications businesses could offer additional competitive service. To bring the maximum benefits to radio users, the Commission should, on reconsideration, adopt a procedure by which a person, by compliance with objective standards, can obtain certification

to provide frequency coordination services. The Commission's willingness to allow any frequency coordinator to coordinate the use of any of thousands of frequencies, without regard to their more narrow experience, demonstrates that there is no valid reason for not allowing open competition in the field, subject only to compliance with certain Commission standards.

On reconsideration, the Commission should express a willingness to certify any person who demonstrates an ability to perform the frequency coordination task and which expresses an intent to comply with all Commission's Rules governing frequency coordinators. A person desiring to obtain certification should demonstrate the capacity to recommend the most appropriate frequency to an applicant and to comply with the requirement for notifying other coordinators of its actions. Upon such a demonstration, the Commission should certify such person and permit that person to extend the benefits of additional competition to all applicants. At that time, all of the existing coordinators should be required to cooperate fully with the new coordinator and to deal with that coordinator on the same basis as they have been dealing among their existing colleagues.

At paragraph 35 of its SRO, the Commission acknowledged the "extensive experience and technical expertise in engineering systems and selecting frequencies" of the existing coordinators. The experience of the existing coordinators is worthy of respect, but in comparative broadcast hearings, the Commission has held that experience is of some merit, but not of dispositive merit, because experience can be acquired over time by anyone. While it is well to honor and respect the experience of the existing coordinators, the limitation on the

experience of others is entirely of the Commission's making. Because there is a pool of experience and expertise in the field which can be acquired by competitive efforts,⁵ the experience and expertise of the existing coordinators provides no basis for precluding new competitors.

At paragraph 48 of the SRO, the Commission left "the implementation details up to each frequency coordinator" for meeting the one-day notification requirement. The Commission left "each coordinator free to choose whichever method best meets its needs", and the Commission suggested that the coordinators might choose to use E-mail or facsimile. While there is merit in allowing the coordinators to take their own needs into account, the key concern for the Commission and for the public interest is not the individual needs of each coordinator, but the needs of all of the coordinators and of the applicants. To assure that all coordinators are able to make the most immediate use of the interchange of coordination information, the Commission should require all of the coordinators to meet a state of the art standard. In a competitive environment, the choice remains to each coordinator to meet the state of the art standard or to depart from the field.

The Commission is moving steadily toward electronic filing. Some of the coordinators are already involved in that practice. The Commission should, therefore, have no reluctance

⁵ Existing and former frequency coordination personnel can be hired by anyone interested in doing so.

to require state of the art electronic communication among the coordinators. Specifically, the Commission should require all of the coordinators to provide their one-day notification information electronically, in machine readable form, such as by the transmission of plaintext ASCII characters in a uniform format⁶, to one another's computers.⁷ Allowing any coordinator to send information by facsimile, by delivery of paper, or by any other method that was oriented toward a product which was not directly machine readable and machine processable to detect coordination conflicts at the earliest possible time would unduly delay the information's utility to the other coordinators and would unduly impair the Commission's ability to meet the mandate of 47 U.S.C. §151.⁸ To assure the provision of a rapid, efficient, nationwide use of the coordinated frequencies, the Commission should require all of the coordinators to exchange their one-day notification information in a form which is directly machine readable and processable by machine immediately upon receipt.

⁶ Since the Commission has established a requirement for the specific information which must be provided, the Commission should have no reluctance to define the format. The Commission has had no difficulty in establishing uniform formats for the filing of common carrier reports with the Commission on magnetic disk, and should encounter no resistance to any format which it specifies.

⁷ The use of E-mail would meet the suggested requirement, as would direct dial-up computer-to-computer communication.

⁸ Section 151 provides that the purpose of the Commission is "to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."

At paragraph 51, the Commission amended Rule Section 90.159 to require a person desiring to commence conditional operation to wait until "a minimum of ten business days has passed between submission of the application to the Commission and the onset of operation," 47 C.F.R. §90.159. Rather than commencing the running of the ten day period at the time of the submission of the application to the Commission, the Commission should commence the running of the ten day period with the delivery of one-day notification of the coordination to the other coordinators.⁹ As a practical matter, during the ten day period, the only persons who will be in a position to protest an application are the frequency coordinators. Experience shows that once an application leaves the coordinator, it typically arrives at the Commission's lockbox bank on the next business day. Several days may pass before the application reaches the Commission's Gettysburg office from the bank. Typically, more than ten days passes from the date on which the Commission is in physical possession of the application and the date on which it appears on the Commission's data base so that any person other than the coordinator and anyone informed by the coordinator would learn of its filing. With those inevitable delays, the fact is that a Part 90 application has been filed with the Commission is not available to the public until more than ten days has passed after submission to the Commission, so the rule will be ineffective in giving anyone other than a coordinator an opportunity to protest an application before operation can commence. Since the rule is clearly intended to provide all coordinators, but only coordinators, with an opportunity to object to a coordination, the logical and reasonable point at which start the running of the ten day period is at the time that the coordination of the

⁹ Where information is sent by e-mail, the Commission should deem delivery to have occurred at the time of transmission to the recipient's mailbox.

application is communicated to the other coordinators. The reason that SBT is interested in this requirement is that small business requires speed and flexibility to compete, and small business can serve best if not subjected to unnecessary delays in commencing operation. The purpose of the rule can be adequately served and the interests of all applicants who desire to commence conditional operation can be balanced best by commencing the running of the ten day period with the delivery of the one-day notification to other coordinators.

At paragraph 52 of the R&O, the Commission adopted concepts and requirements which are unworkable. The Commission gave the coordinators, in the event of conflicting applications, "the joint responsibility to take action necessary to resolve the conflict, up to and including notifying the Commission that an application may need to be returned". As should readily be recognized, joint responsibility in a situation of conflict is no responsibility at all. If each of the coordinators is to do its duty to its own applicant, each applicant should expect that its coordinator will fight for its position and for its benefit. The coordinator cannot carry the water of its applicant on one shoulder and the water of the conflicting coordinator on the other shoulder. The applicant does not, and should not be required to, select a coordinator in a competitive environment which is at all likely to compromise the applicant's position to maintain a comfortable relationship with another coordinator. If the coordinators are to fulfill their responsibilities to their applicants when a conflict arises, the only entity in a position to resolve the conflict is the Commission. Accordingly, the Commission should replace the unworkable imposition of joint responsibility with a responsibility to bring any conflict to the attention of the Commission immediately for resolution in the first instance.

While the Commission stated at paragraph 52 that it believed "that each coordinator should have some responsibility to help resolve problems related to their recommendations," that responsibility should either be withdrawn or made specific and authority should accompany that responsibility. In expressing its belief in coordinator responsibility, the Commission has imposed responsibility without authority, which can lead to nothing but frustration for all parties. Experience has shown that the authority formerly given to the coordinators to "resolve post grant conflicts" has, in general, not been exercised because the coordinators were never given the authority to do anything effective to carry out that responsibility. Further, in the SRO, the Commission failed to define the "problems related to [the coordinators'] recommendations" which give rise to some responsibility. Does the Commission intend for the coordinators to help pay the cost of changing frequencies to correct a bad coordination as part of their responsibilities? Does the Commission intend for the coordinators to help bear the consequential damages flowing from bad coordinations? Does the Commission intend for a coordinator to file a petition for an order to show cause why a license should not be revoked? If the Commission is to impose responsibility on the coordinators, it should either define that responsibility and provide the authority to carry out the responsibility, or it should withdraw the responsibility to avoid either misleading users as to their remedies or imposing unlimited levels of unfulfillable responsibility on the coordinators.

Trunking

The ability to provide trunked service is of great importance to small businesses in telecommunications, because trunked operation provides small businesses with a modicum of competitiveness against other advanced systems. While the spectrum efficiency of television broadcasters has never improved,¹⁰ the Commission's actions in PR Docket 92-235 have made it possible for land mobile operators to increase their spectrum efficiency substantially. To provide new opportunities for more competitive service and to make the most efficient use of scarce Private Radio Services frequencies, the Commission should expand the use of trunking systems so far as possible, so long as no interference is caused to other licensees.

The Commission's plan for authorizing the use of centralized trunking will not work in the urbanized areas, where trunked operation is needed most. Experience with the Commission's similar rules for allowing interconnected operation in the Business Radio Service shows that such a trunking plan can be effective only in assuring that there will be little, if any, centralized trunking authorized. The experience of SBT members has been that almost no one will grant their written consent to anyone else's doing anything on "their" frequency.

Three factors should be appreciated. First, the persons who use the frequencies below 512 MHz are mostly private users, rather than commercial operators, and they know almost nothing about radio communications other than that you push the button to talk. While

¹⁰ One may fairly consider that the duplication of programming on two channels during the transition to all-digital transmission will cut TV broadcasters' spectrum efficiency in half.

commercial operators above 800 MHz, who understand the physics and mechanics of radio communications thoroughly, have readily consented to one another's requests for short spacing where they could determine that there was little or no risk to their communications, few private users have the knowledge and skill to determine their risk and to make a reasoned decision on whether to accept the possibility of interference. For those reasons, it has proven all but impossible to obtain their consent to a specific, exceptional use of a frequency. Second, by now, everyone has heard about the billions of dollars that have changed hands in the quest for frequency gold, to the point that any person from whom a favor is sought concerning use of a frequency expects to be paid handsomely for his gracious cooperation. Third, on any given set of three frequencies¹¹ in the bands below 470 MHz in the Top 100 markets, the Commission's records will show that the number of stations within a 100 mile radius¹² is large. If one assumes a minimal trunked system of five channels, the probability of obtaining the written consent of the licensees of all of them and on all of their adjacent frequencies (a total of 15 frequencies) is vanishingly small.

There is no record to establish the practical consequences for other stations of trunked operation below 800 MHz. To provide greater practicality for the development of trunked

¹¹ One must take into account the main channel and the two adjacent channels.

¹² The interference contour of the station to be trunked is assumed to lie at a distance of 70 miles. Consent must be obtained from the licensee of each station having any service area overlap at 70 miles. While base stations now being initially authorized will have smaller service areas, existing base stations may well have a service area 30 miles in radius, for a total distance of concern between base stations of 100 miles.

systems and for the gathering of information about their operation, the Commission should establish an alternative to the rigorous and impracticable "100 mile consent" requirement.

The Commission should have two tracks toward centralized trunked operation. On one track should be the plan adopted in the SRO. On the other track, the Commission should permit centralized trunking on a secondary, developmental basis to all existing stations, combined with protection against anyone new's being added to the frequency during the developmental period. There is a long established precedent for such developmental operation in the 43 MHz band for common carrier paging, and the method has worked well there. The Commission can require the person choosing trunked operation on a developmental basis to remedy all reported harmful interference within a certain period of time or cease further operation on the frequency until the situation has been resolved. If all reported interference has been resolved at the end of the developmental period, then the authorization should ripen into a regular, primary license. In this way, the Commission can provide an opportunity for increased spectrum efficiency in the urban areas, areas in which, otherwise, there will be absolutely no progress in the spectrum efficient use of trunking. A suggested rule amendment which provides for developmental operation of a centralized trunking system is attached as Attachment I hereto.

By its adoption of a formal procedure for trunking, the Commission, apparently inadvertently, cast doubt on the continued legality of existing trunked operations currently employing hundreds, if not thousands, of channels below 800 MHz and which have an investment of millions of dollars dedicated to the service of end users. While the SRO speaks

to the use of centralized trunking, the codified rules which the Commission adopted are broader and appear to require concurrence and specific authorization for any type of trunked operation, centralized or decentralized.

Until the SRO, nothing in the Commission's Rules either prohibited or expressly permitted trunked operation in the bands below 800 MHz. For some years, the Commission's informal policy has been to disregard trunked operation below 512 MHz, provided that no interference was caused therefrom.¹³ Technical systems have been designed and placed in operation throughout the nation which are specifically designed to operate cooperatively and successfully in a trunked mode while sharing the channel with other licensees and avoiding harmful interference to them. To avoid destroying the investments of thousands of small businesses, including both operators and end users, and disrupting the existing, reliable communications of thousands of end users, the Commission should specifically acknowledge and permit the continued operation of decentralized trunked systems, provided only that they comply with Sections 90.173(b) and 90.403(e) of the Commission's Rules. The Commission should also specifically permit the construction and operation of new, decentralized trunked systems, without requiring further authority from the Commission. A suggested rule amendment which provides for decentralized trunking is attached as Attachment II hereto.

¹³ At least one member of SBT holds a specific authorization for trunked operation on exclusive frequencies in the 470-512 MHz band. Since the time that that authorization was granted, informal Commission policy has permitted non-interfering use of trunked equipment on shared channels.