BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 309(j) and 337 of	)	WT Docket No. 99-87
the Communications Act of 1934, as	)	RM-9332
amended; Promotion of Spectrum Efficient	)	RM-9405
Technologies on Certain Part 90 Frequencies;	)	
Establishment of Public Service Radio Pool	)	
in the Private Mobile Frequencies Below	)	
800 MHz	)	

To: The Commission

COMMENTS OF TRIMBLE NAVIGATION LIMITED

Trimble Navigation Limited ("Trimble"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, hereby comments on the Commission's Notice of Proposed Rule Making in the above-captioned proceeding.[1] The Commission is correct in suggesting that the public interest would best be served through the preservation of the current licensing scheme for Private Land Mobile Radio Service ("PLMRS") frequencies below 470 MHz, and it should also maintain the current licensing scheme for PLMRS frequencies in the 900 MHz bands.[2] As auctions of spectrum for these services are

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1 Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz, FCC 99-52 (WT Docket No. 99-87) (1999) ("NPRM").

2 As used herein, the term "900 MHz band" refers to the 896-901/935-940 MHz band.

neither required nor appropriate, the Commission need take no steps to prevent any speculative activity that might precede the adoption of auction rules.

I. Background

Trimble is the designer of a Real-Time Kinematic ("RTK") system for use in connection with the Global Positioning System ("GPS"). Trimble's RTK GPS systems have been employed throughout the United States since 1993 pursuant to FCC authorizations, and have become indispensable in the work of many firms in the multi-billion dollar U.S. land survey, civil engineering, construction and mining industries. Users also include city, county, state and federal agencies.[3]

Trimble's RTK GPS systems fall within a sub-class of PLMRS,[4] and operate in the 450-470 MHz and 900 MHz bands. As discussed further below, any attempt to auction any of these

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[3] A Trimble RTK GPS system consists minimally of two GPS receivers connected by a wireless data link. One receiver serves as the base, while the other, known as the rover, is moved about in the field by a user/surveyor. Multiple GPS receivers can be used as rovers simultaneously. Most RTK GPS systems broadcast data one-way via the wireless data link from the base to the rover(s) on a single radio frequency. If a given frequency is found to be in use, the system can be adjusted to permit use of a different frequency. Two additional frequencies are also typically used by RTK GPS system operators for emergency voice communications among surveyors working in the field at or near hazardous work sites.

[4] See 47 C.F.R. § 90.1 (including among the services constituting the PLMRS systems licensed and used in the Industrial and Radiolocation Radio Services), § 90.35(1) (providing that the Industrial/Business Radio Pool of the PLMRS is open to, inter alia, persons engaged primarily in the operation of a commercial activity).

PLMRS bands would be inconsistent with the Balanced Budget Act of 1997,[5] would profoundly change the way PLMRS is currently provided, and would seriously disrupt Trimble's business activities and thereby negatively impact its customers who are the true users and licensees of the spectrum.

II. The Commission Should Retain its Current Licensing Schemes for PLMRS in the Bands Below 470 MHz and in the 900 MHz Bands.

A. The Commission Cannot Legally or Practically Assign PLMRS Spectrum by Means of Competitive Bidding.

In its NPRM, the Commission notes that the Balanced Budget Act required the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, except in the case of licenses or construction permits issued for public safety radio services that (i) are used to protect safety of life, health or property; and (ii) are not made commercially available to the public.[6] The Commission also notes, however, that it is only permitted to employ competitive bidding to resolve mutually exclusive applications.[7] In fact, the Balanced Budget Act placed special emphasis on the Commission's obligation to employ

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5 Pub. L. No. 105-33, 111 Stat. 251 (1997) ("Balanced Budget Act").

6 See NPRM, FCC 99-52, slip op. at 14 (¶ 18). Also exempt from this requirement are initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; noncommercial educational broadcast stations; and public broadcast stations. See id. at 14 & n.89.

7 See id. at 14 (¶ 19).

all available means to avoid mutual exclusivity (and thus, competitive bidding) where to do so would be in the public interest.[8]

The Commission has determined that applications are "mutually exclusive" if the grant of one application would effectively preclude the grant of one or more other applications.[9] Where spectrum can be shared among an unlimited number of applicants, it is therefore axiomatic that mutual exclusivity does not exist.

The Commission observes in the NPRM that, within the PLMRS, the Industrial/Business frequencies -- including the 450-470 MHz band, which is used by Trimble's RTK GPS systems -- are licensed on a shared, non-exclusive basis so that multiple users with different coverage and capacity requirements can use the same frequencies effectively.[10] The Commission also observes that it has designated spectrum used by the PLMRS in the 900 MHz band as shared.[11] The Commission therefore cannot employ competitive bidding to award PLMRS spectrum in the 450-470 MHz or 900 MHz bands without violating the Act's prohibition of auctions of spectrum in the absence of mutual exclusivity. Indeed, the Commission has previously held that it will

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8 See id.

9 See id. at 5 (¶ 4) (citing Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 8 FCC Rcd 2348, 2350 n.5 (1994) ("Competitive Bidding Second Report and Order")).

10 See id. at 11 (¶ 14).

11 See id. at 10-11 (¶ 12). A licensee may only obtain exclusive use of a frequency in these bands by showing that it will meet certain loading requirements. See id.

exclude from competitive bidding "those services in which mutual exclusivity between applications cannot exist because channels are shared by multiple licensees."[12]

Even if the auction of the aforementioned PLMRS bands were legally permissible, it would be impossible to administer unless the Commission were to alter dramatically the way in which those bands are now used. As noted above, the 450-470 MHz and 900 MHz bands are currently designated for shared use -- and are regularly employed by many thousands of different users each and every day. For an auction to have any value to bidders, however, it seems obvious that a successful bidder would have to be granted the exclusive use of the bands for which it is

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[12] See id. at 11 n.61 (citing Competitive Bidding Second Report and Order, 8 FCC Rcd at 2351). As noted above, the Balanced Budget Act established an exemption from the Commission's auction authority for certain "public safety radio services." See NPRM, FCC 99-52, slip op. at 17 (¶ 26). In the NPRM, the Commission seeks comment on the scope of this exemption. See id. at 20 (¶¶ 32, 33). The Balanced Budget Act defines "public safety radio services" to include private internal radio services used by, inter alia, non-government entities. See id. (¶ 32). Trimble supports the Commission's logical proposal to define "private internal radio service" as a service in which the licensee does not receive compensation, and in which all messages are transmitted between fixed operating positions located on premises controlled by the licensee and the associated fixed or mobile stations or other transmitting or receiving devices of the licensee. See id. Trimble also supports the Commission's suggestion that the definition of private internal systems operated on a cooperative or multiple-license basis be included in the definition of "private internal radio services," as they are not operated as a direct source of revenue but rather as a means of internal communications to support day-to-day business operations or to protect the safety of employees, customers or the general public. See id. (¶ 33). Trimble's RTK GPS systems fit these descriptions. Therefore, to the extent that the Commission may for any reason contemplate the auction of PLMRS spectrum in the 450-470 MHz or 900 MHz bands, and to the extent that it adopts the foregoing definitions, Trimble requests that the operations of its RTK GPS systems in those bands be classified as "public safety radio services" and be found exempt from the Commission's auction authority.

bidding. Plainly, the grant of exclusive use of bands that are currently designated for shared use would place in jeopardy the operations of all current users of those bands except for those of the winning bidder. It seems highly unlikely that any one-time payment that the U.S. Treasury might receive from a PLMRS auction winner could outweigh the public interest in protecting numerous existing Commission licensees and their customers from such an outcome.

B. The Establishment of a New PLMRS Licensing Scheme for the 450-470 MHz or 900 MHz Bands Would be Pointless and Wasteful.

Trimble urges the Commission not to attempt to employ an alternative licensing scheme such as geographic licensing for the PLMRS so as to be able to adopt competitive bidding for PLMRS spectrum.[13] Quite apart from the fact that competitive bidding for shared use spectrum is inappropriate, the adoption of geographic licensing or some other new licensing plan for PLMRS at this time would be purposeless and counter-productive.[14]

The Commission has previously held that geographic licensing offers certain logistical advantages both to Commission licensees and the Commission itself.[15] Nevertheless, the 450-

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[13] See id. at 34-36 (¶¶ 66-74).

[14] Trimble believes that Congress' decision to incorporate into Section 309(j)(1) of the Act the Commission's obligation under Section 309(j)(6)(E) to take steps to avoid mutual exclusivity indicates its intent that the Commission take all available steps to avoid, rather than foster, the use of competitive bidding wherever the public interest would be served thereby. Trimble believes that the case of PLMRS in the 450-470 MHz and 900 MHz bands is just such a situation.

[15] See id. at 32 (¶ 63) & n. 190.

470 MHz and 900 MHz bands are so heavily used[16] that, as the Commission itself speculates, there would be insufficient "white space" available to geographic area licensees to make a geographic area license worth holding.[17] Thus, the Commission's current PLMRS licensing scheme is surely worth preserving.

In this same regard, Trimble notes that the Commission only recently concluded a difficult, multi-year proceeding in which it strove to maximize spectrum efficiency in the PLMRS frequencies below 470 MHz through engineering solutions. As a result of that proceeding, the Commission has made substantial changes to its regulatory and technical framework for PLMRS in those bands.[18] To summarily discard that valuable work in favor of a new licensing scheme whose prospects for success are questionable at best would be unnecessarily disruptive and wasteful of Commission and licensee resources.

III. The Commission Should Not Freeze Applications for PLMRS Licenses in the 450-470 MHz or 900 MHz Bands.

The Commission notes that, in services where it has transitioned to geographic area licensing and auction rules, it has previously suspended acceptance of new license applications until such time as it adopts final rules and begins accepting applications to participate in the

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16 See, e.g., id. at 35 (¶ 68) (noting heavy use of PLMRS frequencies below 470 MHz).

17 See id. at 34 (¶ 67).

18 See id. at 35 (¶ 68).

auction of spectrum for those services.[19] The purpose of such an application freeze, according to the Commission, is to deter speculative applications and to ensure that the goals of the rule making are not compromised.[20]

As explained above, neither spectrum auctions nor geographic licensing would be appropriate for PLMRS operations in the 450-470 MHz or 900 MHz bands. Provided that the Commission does not make such changes, no speculative applications will be filed, and the Commission therefore can and should forego any freeze on applications for PLMRS licenses in those bands.

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19 See id. at 42 (¶ 96).

20 See id.

IV. Conclusion.

For the foregoing reasons, the Commission should retain its current licensing schemes for PLMRS in the 450-470 MHz and 900 MHz bands, and refrain from imposing a freeze on applications for PLMRS licenses in those bands.

Respectfully submitted,

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