

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington DC

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In the Matter of)
)
Amended Petition for Rulemaking)
Of PetroCom License Corporation)
to Amend Parts 21 and 74 of the)
Commission's Rules with Regard to)
Licensing in the Multipoint Distribution)
Service and the Instructional Television)
Fixed Service for the Gulf of Mexico)

RM-PRM96MM

RM-9718

COMMENTS OF
RIG TELEPHONES INC. dba DATACOM

RIG TELEPHONES INC. dba DATACOM ("Datacom"), by its attorneys, hereby submits its comments in response to the Commission's August 11, 1999 request for comment, DA 99-1601, on the above-referenced Amended Petition for Rulemaking ("Petition") of PetroCom License Corporation ("PetroCom").

Datacom is a full service communications company in the Gulf of Mexico, where it has been operating for more than a quarter of a century. Initially formed in 1965 as The Gulf Coast Telephone Company, Datacom was the first common carrier in the Gulf of Mexico. With 200 employees, and over \$30,000,000 in sales, Datacom is the largest communications provider in the Gulf. Datacom owns and operates both wired and wireless systems. Its services include microwave, point-to-point, voice, video-conferencing, data transfer, and supervisory control and data acquisition (SCADA). Datacom consistently has been a technological leader in the Gulf. For example, Datacom's OC3 SONET Digital Microwave backbone system, with over 1,300 miles of loop protected digital microwave, is the latest in state-of-the-art digital technology.

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Datacom agrees that the Commission should permit licensing of Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) frequencies in the Gulf of Mexico and should establish Rules to move toward auction of these frequencies as quickly as possible. Datacom does not agree with some of the strictures proposed by PetroCom regarding number of licenses, timing of licensing and the small business set-aside. Indeed, PetroCom's proposals are self serving and if implemented might well ensure that PetroCom would be the only bidder that could qualify.

Instead, the Commission should allow four separate licenses and should issue all four simultaneously. Rather than a small business set-aside, a small business bidder credit would be sufficient to ensure small business participation. To the extent a small business set aside is adopted, the Commission should not deviate from its rules for the MDS auction. To ensure that spectrum will be used in the most efficient way possible, spectral efficiency requirements should be put in place through minimum bits/hertz requirements. Also, a one-year buildout should be required, i.e, 80% in the first year after license issuance.

Finally, prior to conducting any auction involving MDS and ITFS frequencies in the Gulf of Mexico, the Commission should cancel PetroCom's developmental licenses for these frequencies, and should require disclosure by PetroCom of all data it has amassed in conducting operations under these licenses, in order to ensure a level playing field among potential bidders. Failure by the Commission to take this step will taint the auction process and leave it open to legal challenge.

1. THE PETROCOM PROPOSAL WOULD IMPOSE UNNECESSARY AND UNFAIR LIMITS ON THE NUMBER OF POTENTIAL LICENSEES AND BIDDERS.

PetroCom asks the Commission to allow only two licenses in the Gulf of Mexico with one of the licenses, Block A, to be set aside for a "small business"

applicant. PetroCom requests further that only the small business Block A license be issued at this time, with the other license being withheld for at least five years. Finally, PetroCom suggests a \$75 million asset cap and \$25 million annual average gross revenue cap over the preceding three calendar years for qualifying "small business" bidders. Such a proposal, if implemented, may virtually ensure that PetroCom would be granted a monopoly in the Gulf for operating on these frequencies.

The Commission should be aware that of all of the major communications providers in the Gulf of Mexico, PetroCom is the only one that could meet these proposed "small business" cap limits, and thus would likely be the only serious bidder for the proposed Block A license. This, combined with the proposed five year hiatus on issuance of the Block B license, would likely result in PetroCom emerging as the only MDS/ITFS licensee for the foreseeable future. In this view, PetroCom's proposal is terribly self-serving.

The craftiness of PetroCom's proposal is highlighted by its proposed timing for assessing average annual gross revenues in making the small business determination, i.e., over the "*preceding* three calendar years." We understand on information and belief that PetroCom is engaged in negotiations to purchase the assets of Shell Offshore Services Company, one of the largest communications providers in the Gulf. Presumably, if a deal is struck, it would close in the first quarter of next year, 2000, possibly making PetroCom the largest communications carrier in the Gulf. But even so, PetroCom would still qualify as a small business under its proposed definition, which looks only at the preceding three calendar years. This result, that the largest communications provider in the Gulf could still qualify as a small business, while smaller companies could not, would be unfair, and demonstrates how truly self-serving PetroCom's proposal is.

2. THE COMMISSION SHOULD ISSUE FOUR LICENSES.

There is sufficient spectrum available in these frequencies to justify issuing four licenses, rather than only the two licenses proposed by PetroCom. Indeed, The PetroCom two-license proposal would result in each licensee having vastly more spectrum than is needed for any conceivable system. Such extravagant licensing of spectrum is neither necessary nor advisable. Ultimately, it would encourage inefficient use of spectrum, while artificially limiting competition.

On the other hand, dividing the available spectrum into four blocks would still allow sufficient spectrum for each licensee to operate an independent fully-capable system, while encouraging competition, and stimulating competitively-driven technological change.

PetroCom's suggestion in its Petition that the Gulf market might not be large enough to support more than one licensee is self-serving and unsupported. Market participants and potential bidders should be allowed to decide for themselves whether to compete and how much to pay for spectrum, based on potential demand for service. The Commission should encourage such competitively-driven decision making, and the technological change and efficient use of spectrum that will result, rather than artificially protecting any single *potential* bidder out of fear that the market might not justify that bidder's operations. Therefore, the Commission should divide the available spectrum into four blocks and licenses four separate entities.

3. ALL FOUR LICENSES SHOULD BE ISSUED SIMULTANEOUSLY

Contrary to PetroCom's suggestion that only one license should be issued at this time, with other license(s) being withheld for at least five years, all licenses should be made immediately available. Failure to do so, again, would impose artificial limits on competition and user options, and, ultimately, would inhibit

market development and technological change. PetroCom's suggestion that the market is not big enough to support more than one license is not supported. The Commission should allow the auction process to serve as the true test of the ability of the market to support additional licenses.

Clearly, there are competing technologies that can be used to operate on these frequencies. By issuing four licenses simultaneously, rather than only one, the Commission will allow the marketplace to determine success and development of these technologies. Datacom submits, for example, that PetroCom's proposed WillNet64+ system uses 10-year-old off-the-shelf technology, rather than today's state-of-the-art technology. Customers in the Gulf should be allowed to choose the technology they prefer. Their choice will be artificially and possibly detrimentally limited if the Commission adopts PetroCom's proposal of issuing only one license at this time.

4. A SMALL BUSINESS SET-ASIDE IS NOT NECESSARY

Because of the size and structure of the Gulf market, no small business set-aside is justified. The interests of small businesses can be sufficiently protected through bidding credits, e.g., 25% credit for small business, combined with simultaneous issuance of four licenses. As discussed above, the set-aside suggested by PetroCom would unfairly advantage PetroCom, as it is the only major competitor likely to qualify. As for defining what constitutes a small business, there is no reason to depart from what the Commission's rule established in the MDS auction, i.e., a \$40 million average annual cap. In addition, the Commission should ensure that computation of this cap takes into account acquisitions made during a current calendar year.

5. THE COMMISSION SHOULD ENSURE SPECTRAL EFFICIENCY

Because these frequencies have not been licensed in the Gulf, the Commission essentially is starting with a "clean slate," and can impose requirements that will ensure efficient use of the spectrum without disadvantaging any potential bidder. The Commission should ensure spectral efficiency in this manner by imposing minimum bits/hertz ratios as follows: not less than 5 bits/hertz in downstream performance, and not less than 2 bits/hertz in upstream performance. Current technologies can achieve these performance ratios, and anticipated customer needs can not effectively be met without these performance ratios, particularly in data applications.

6. THE COMMISSION SHOULD REQUIRE A ONE-YEAR BUILDOUT

Licensees should be required to buildout a system within one year capable of servicing 80% of the population. This will ensure that customer's needs are met, and that licensees are not simply "hoarding" spectrum against potential future need.

7. PETROCOM'S DEVELOPMENTAL LICENSES SHOULD BE CANCELED AND PETROCOM SHOULD BE REQUIRED TO DISCLOSE ITS DEVELOPMENTAL DATA PRIOR TO ANY AUCTION OF THESE FREQUENCIES

Currently pending before the Commission are several motions regarding PetroCom's operation of a "developmental" system on these frequencies in the Gulf. As these motions demonstrate, PetroCom has gone beyond the scope of its developmental licenses and is operating a full-fledged commercial system. These ongoing unauthorized commercial operations will give PetroCom an unfair advantage in any auction of this spectrum.

Obviously, a bidder competing for spectrum on which it already has a fully-deployed and loaded system will have a financial advantage over bidders that are new to the spectrum, particularly for obtaining investment capital to compete in the

auction, based on track record, timetable for deployment, marketing issues, and other start-up obstacles. In other words, the bidder that has already constructed and loaded its system will begin generating revenue from its auction investment in a much shorter time period than the other bidders, allowing the former bidder to obtain lower cost financing, etc. Thus, the FCC should first cancel PetroCom's licenses at least 6 months prior to holding any auction of these frequencies to diffuse the affects of PetroCom's current unfair advantage. Failure of the Commission to take this step will taint the auction process and subject it to legal challenge. Congress did not authorize the Commission to conduct auctions that are skewed to favor a particular competitor in the market, especially one that gained its advantage by violating the Commission's policies on developmental authorizations.

In addition, PetroCom has not yet fully disclosed the data it has amassed in the course of operations under its developmental licenses. This data should be made available to all potential bidders so that they may be fully informed prior to the auction. Again, to allow full analysis and assessment of the data, PetroCom should be required to disclose it at least six months prior to the auction.

8. CONCLUSION

For the foregoing reasons, the Commission should adopt rules for licensing of MDS and ITFS frequencies in the Gulf in accordance with the above discussion.

Respectfully submitted,



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