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September 30, 1999

VIA HAND DELIVERY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W. - Room TW-B204
Washington, D.C. 20554

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SEP 30 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: WT Docket No. 99-87
RM-9332

Dear Ms. Salas:

On behalf of Forest Industries Telecommunications (FIT), we are filing an original and nine (9) copies of its Reply Comments in the above-referenced proceeding.

Please communicate with us if additional information is required.

Very truly yours,
FLETCHER, HEALD & HILDRETH, PLC



George Petrutsas
Counsel for
Forest Industries Telecommunications

GP:cej
Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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SEP 30 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

**REPLY COMMENTS OF
FOREST INDUSTRIES TELECOMMUNICATIONS**

BACKGROUND

Forest Industries Telecommunications ("FIT"), by counsel, submits these reply comments in the above-referenced proceeding in which the Commission proposes to implement the 1997 amendments to Section 309(j) of the Communications Act of 1934, adopted as part of the Balanced Budget Act of 1997 ("1997 Budget Act", or "the Budget Act"). Those amendments expanded the Commission's auction authority to encompass mutually exclusive applications in the private wireless services. The Commission is considering, among other matters, adoption of an auctions program for the private wireless services. FIT, in its initial comments, expressed strong opposition to such an auction program. FIT also opposed the establishment of a public service radio pool.

REPLY COMMENTS

1. The comments overwhelmingly opposed auctions in the private wireless services

FIT notes that the comments filed in this proceeding overwhelmingly also opposed the proposals discussed in the Commission's Notice for replacing the current licensing system with one or more licensing methodologies which would accommodate auctions, and joins those who opposed the auction proposals¹ in urging the Commission to reject them. FIT respectfully submits that the record in this proceeding would not support adoption of an auctions program. The record demonstrates that neither Section 309(j) nor the public interest requires the Commission to embark upon a course of action which would have devastating adverse consequences on one of the most successful services regulated by the Commission, the private wireless service.² As the record makes clear, the current licensing system is well suited for authorizing private systems in an environment where the frequencies are shared intensively,³

¹See, e.g., Comments of Personal Communications Industry Association (PCIA); American Petroleum Institute (API); MRFAC, Inc.; Motorola, Inc.; Land Mobile Communications Council (LMCC); Association of American Railroads (AAR); Industrial Telecommunications Association, et al.; Northern Texas Communications Council, among others.

² See generally Comments of PCIA, MRFC, ITA.

³See, e.g., PCIA Comments, pp. 2, 3, where PCIA notes that the current licensing system

". . . represents on a per license basis the most efficient, effective and least costly of all of the services regulated by the Commission . . ."

See also API Comment, pp. 12, 13, where API states:

Auctions in this environment would be neither desirable nor, indeed, feasible.

Under the current system, more than one million stations have been licensed in a rather limited amount of spectrum authorized to operate more than 15 million transmitters. Those systems are designed to accommodate specific requirements, are spectrally efficient, and have been licensed relatively quickly and inexpensively. Given the existing environment, revamping the current licensing system so that licenses can be auctioned would be a highly disruptive, hugely expensive, and very much an impractical undertaking. In sum, embarking upon an auction program at this juncture would be against the public interest.

FIT recognizes that not all of those who filed comments opposed the auction proposals. Nextel Communications, Inc. ("Nextel"), and perhaps one other entity,⁴ would have the Commission auction all of the spectrum allocated to the non-exempt private wireless services. Moreover, Nextel would have the Commission expand eligibility to permit participation in such auctions by commercial communications providers, such as Nextel. Auctions, Nextel states, would end "corporate welfare" that places "free" spectrum in the hands of some of the largest companies and argues that auctions have been the Commission's most efficient licensing tool in that, according to

"The existing site-by-site licensing approach enables a private licensee to tailor its system to its individual coverage requirements".

⁴ See, the somewhat ambivalent comments of the American Mobile Telecommunications Association, Inc. (AMTA).

Nextel, auctions assign licenses in a timely manner.⁵

There are several problems with Nextel's arguments. First, the 1997 amendments to Section 309(j) of the Act do not authorize auctioning all of the non-public safety spectrum. The statute exempts applications for private, non-governmental, internal wireless systems if they are to be used for the protection of life and property. Moreover, even for the non-exempt applications, Section 309(j) requires the Commission to first employ other licensing tools which would avoid mutual exclusivity and, consequently, auctions. FIT submits that the Commission's paramount obligation under the new statute is to avoid mutual exclusivity and auctions. The current, well-functioning, site-by-site, first-come-first served licensing process avoids mutual exclusivity and, therefore, the Commission may not abandon it without very good reasons. The record in the proceeding demonstrates that there aren't good reasons for replacing the current system with auctions.

The claimed licensing efficiency of auctions is greatly exaggerated. It took the Commission nearly 5 years to implement an auction program for the 200 SMR channels in the 860-865 MHz band and to grant the first SMR licenses under it.⁶ During

⁵See, Comments of Nextel, pp. i, ii, 10, 11, 12.

⁶The Notice of Proposed Rulemaking in PR Docket 93-144, in which the SMR program was developed, was issued in May of 1993. 8 FCC Rcd 3950 (1993). The first conditional SMR licenses granted as the results of the auction were issued in March of 1998, See Public Notice, DA 98-445, dated 3/6/98. The Commission is experiencing similar delays in implementing an auction program for paging licenses. While the NPRM in that proceeding was issued in 1996, in WT Docket No. 86-18, 11 FCC Rcd 309 (1996), the first auction in that service is scheduled for February 2000. See Public Notice, DA 99-159, 8/12/99.

that five-year period, application freezes brought to a halt practically all licensing activities in the 860 MHz SMR spectrum as well as in the 150 commonly available (GS) channels. During that same five-year period, thousands of private land mobile licenses were issued quickly and efficiently authorizing new or expanded communications facilities in thousands of operations. In view of the existence of over a million of incumbent stations, it will be much more difficult to implement an auction program for the private wireless services than it was in the SMR service. And, of course, imposing freezes on processing applications in the private services would be unthinkable.

The public interest benefits of that SMR auction are not as clear as Nextel claims. It need only be noted that the main result of the SMR auction was to ensure Nextel's control of over 90% of the 800 MHz SMR spectrum throughout the country. It is difficult to conceive how that result comports with the public interest.

Nextel's corporate welfare argument has no merit. Land mobile wireless systems are used by small as well as by large companies. In the forest products industry, most of the licenses are held by small entities engaged in logging and other related activities. Moreover, unlike Nextel and other commercial communication providers that use the spectrum as a business, private land mobile licensees use their facilities for the safety of their employees and of the public they serve, for improved services, and to enhance efficiency in operation, all of which are in the public interest. Moreover, private licenses also pay: they pay for coordination services; they pay application fees; and they pay regulatory fees. If the Commission believes that private wireless licensees should also pay for the use of the spectrum as such, the

Commission should seek legislation which would authorize the imposition of user fees. The Commission, of course, does not now have such authority. User fees would make more sense in the private wireless services than auctions.

2. An alternative to the public safety service pool proposed in RM-9405 should be considered

FIT appreciates the concerns of the utilities, the railroad and of the petroleum industries, the petitioners in RM-9405, about the increased potential for interference to their land mobile wireless communications systems brought about by the consolidation of the former private services in PR Docket 92-235. FIT is also concerned about the increased potential for interference to safety critical land mobile communications in the forest products industry. However, FIT agrees with those who have argued that the public safety exemption in Section 309(j) of the Communications Act may not be the basis for establishing the pool proposed in RM-9405. The public safety exemption in the statute is broader than that. It is not limited to any specific industries. While the utilities, the railroad and the pipeline industries are mentioned in the legislative history of the 1997 Budget Act amendments, they are obviously mentioned by way of illustration not for the purpose of confining the public safety exemption to those industries. The statute, by its own terms, exempts from the FCC's auction authority applications of any non-governmental entity for wireless facilities if those facilities would be for internal communications and would be used to protect safety of life, health and property. Land mobile wireless communications in the forest products industry fall squarely within the language of the exemption. The primary purpose of private

communications systems in the forest products industry is the protection of safety of life and property. Safety is a major concern in that industry. Nearly one out of five forestry workers is injured or becomes ill in the woods each year. Private land mobile communications help bring the required aid. Forest fires destroy hundreds of thousands of acres of private, state and national forest every year. Private systems also help to suppress forest fires as well as to prevent forest fires.

The pool proposed in the UTC/API/AAR petition would not be consistent with the public interest. Creation of such a pool would deny the forest products industry (and to other industries as well⁷) the use of frequencies the industry has used for nearly half a century and on which its core land mobile communications systems now operate. Such a result would simply be unacceptable, and it would be unnecessary. The forest products industry has shared successfully the frequencies in question with the utilities and the petroleum industries also for nearly half a century without any interference problems. There is no reason why such sharing cannot continue. Moreover, they are less onerous alternatives for addressing the legitimate concerns of the petitioners about the increased potential for interference brought about by the consolidation of the private services.

For example, the Commission should consider adoption of a procedure similar to that proposed by API in its Petition for Reconsideration addressed to the Commission's

⁷E.g., the manufacturing and the telephone industries shared some of the frequencies targetted for the proposed pool.

Second Report and Order in PR Docket 92-235.⁸ Under API's proposal, the Commission's rules would require the concurrence of incumbents for the coordination and grant of an application if such an application proposes a co-channel station that could interfere with the incumbent's station. FIT urges the Commission to consider API's proposal but to expand it to apply to the forest products as well as to the other industries that shared the frequencies in question before the consolidation of the private services.⁹ Such a procedure would address the legitimate interference concerns in the utilities, the railroad and of the petroleum industries, as well as the concerns in the forest products, manufacturers and telephone industries, while preserving the basic benefits of the consolidation of the private services. The public interest would be well served.

Accordingly, FIT urges the Commission to deny RM-9405 and to consider adoption of a concurrence procedure as the means for protecting incumbent land

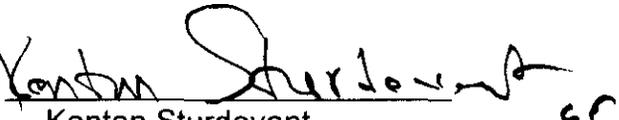
⁸Petition for Reconsideration filed by the American Petroleum Institute in PR Docket 92-235 on May 19, 1977.

⁹Former private radio service that shared some of the frequencies targetted in the petition for the proposed pool include the former Manufacturers, Telephone Maintenance and the Motor Carrier Radio Services.

mobile facilities on frequencies previously shared by the former core industrial and transportation radio services.

Respectfully submitted,

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Date: September 30, 1999

CERTIFICATE OF SERVICE

I, Chellestine Johnson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that copies of the foregoing "Reply Comments" were sent this 30th day of September 1999, by hand delivery and first-class United States mail, postage prepaid, to:

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