

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
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 )

WT Docket 99-87

RM 9332

REPLY COMMENTS OF THE BOEING COMPANY

The Boeing Company (Boeing), a manufacturer of commercial aircraft and a significant user of private wireless spectrum, welcomes the opportunity to reply to the comments submitted in the above-captioned proceeding. With this reply, Boeing hereby supports the consensus of comments filed by members of the private wireless industry opposing the expansion of the Commission's auction authority to the allocation of private wireless spectrum. As a holder of numerous private land mobile radio licenses, Boeing has a significant interest in any reallocation of private wireless spectrum or any revision in the Commission's policies regarding private wireless licensing.

Boeing, like many other commenters in this proceeding, strongly believes that the principles of coordination and shared use continue to serve private wireless licensees well, and that competitive bidding is a particularly inappropriate method for the allocation of any private radio spectrum. Further, Boeing remains committed to its previous recommendations to promote efficient use of private wireless spectrum, namely through the Commission's pursuit of the

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authority to impose efficiency based user fees on newly allocated private wireless spectrum.<sup>1</sup> Accordingly, Boeing offers the following comments to ensure that the Commission receives a clear articulation of the issues raised by its *Notice of Proposed Rulemaking*.

As directed by Congress and as evidenced by an overwhelmingly number of comments, the Commission must continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means to avoid mutual exclusivity of private wireless applications.<sup>2</sup> This is to say that the Commission must avoid mutual exclusivity wherever possible. Boeing strongly supports the belief that the Commission has an absolute obligation to ensure that its determinations with regard to the allocation of private wireless spectrum are consistent with the Congressional dictates of Section 309(j)(6)(E). Simply stated, Boeing agrees that under the 1997 Balanced Budget Act amendments, the Commission has a threshold responsibility to resolve mutual exclusivity before ever considering the use of competitive bidding.

In this regard, many commenters, including Boeing, also agree that the existing mechanism for licensing private wireless spectrum successfully prevents the occurrence of mutual exclusivity and eliminates the need even to consider the use of auctions to select among private radio license applications.<sup>3</sup> Further, the industry stands united in an understanding that

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<sup>1</sup> See Boeing's Ex Parte Presentation to the FCC, PR Doc. No. 92-235, "Frequency Spectrum Issues", at 16 (filed Sept. 25, 1995), "Comments of The Boeing Co., PR Docket No. 92-235, at 3 (filed Nov. 20, 1995), Reply Comments of The Boeing Co., PR Docket No. 92-235, at ii (filed Jan. 11, 1996), and Boeing's Ex Parte Presentation to the FCC, "Frequency Spectrum Issues – Inefficiency License Fees" (filed Feb. 21, 1997); see also Comments of The Boeing Company, WT Docket 99-87 (filed August 2, 1999).

<sup>2</sup> See e.g. Comments of Motorola at 3 (Aug. 2, 1999); Joint Comments of the Industrial Telecommunications Association, Inc., the Council of Independent Communications Suppliers, the Taxicab & Livery Communications Council, and the Telephone Maintenance Frequency Advisory Committee at 4 (Aug. 2, 1999) (*Joint Comments of ITA*).

<sup>3</sup> See e.g. Joint Comments of ITA at 6; Comments of Commonwealth Edison Company at 9; Comments of Motorola at 3; Comments of The Personal Communications Industry Association, Inc. at 2-3 (Comments of PCIA).

the auctioning of private radio spectrum would be untenable, unadvisable, and contrary to the public interest.

In fact, commenters note that the costs of preparing for, and participating in, a FCC auction would represent an extraordinary burden for a private wireless user.<sup>4</sup> Moreover, and as aptly stated by MRFAC, Boeing agrees that “FCC auctions are totally removed from the core competencies of most industrial users, and should not be imposed on them.” With these understandings in mind, Boeing reiterates its initial comments and urges the Commission not to manipulate the private wireless licensing process in a manner that fabricates the increased occurrence of mutual exclusivity simply as a pretext to pursue auctions.

A review of the comments in this proceeding indisputably demonstrates that the private wireless industry favors the rejection of any proposal to auction private wireless spectrum.<sup>5</sup> The majority of commenters also agree that the 1997 Balanced Budget Act amendments to the Communications Act do not require the Commission to award private radio licenses through the use of competitive bidding.<sup>6</sup> Boeing joins the industry in these opinions.

Boeing further joins a number of commenters in opposition to the Commission’s proposal to relinquish its private wireless licensing duties to a “Band Manager” licensee.<sup>7</sup> Boeing contends that the proposed privatization of inherently governmental responsibilities abandons the Commission’s proper role in administering a scarce and valuable public resource. As perhaps

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<sup>4</sup> See e.g. Comments of MRFAC, Inc. at 5 (Aug. 2, 1999); Comments of The Private Internal Radio Service Coalition at 9 (Aug. 2, 1999).

<sup>5</sup> See e.g. Comments of MRFAC, Inc. at 8; Comments of USMSS, Inc. at 4; Comments of PCIA at 4; Comments of Commonwealth Edison Company at 9; Comments of Motorola at 4; Joint Comments of ITA at 24.

<sup>6</sup> See e.g. Comments of MRFAC, Inc. at 7-8; Comments of USMSS, Inc. at 4; Comments of PCIA at 5; Joint Comments of ITA at 6-7; Comments of Motorola at 1.

<sup>7</sup> See e.g. ); Comments of The Private Internal Radio Service Coalition at 18; Comments of Commonwealth Edison Company at 26; Comments of PCIA at 30 (“PCIA would not support, however, the assignment through auction of any spectrum to a for profit licensee which could then sub-lease the spectrum to others.”); see also Comments of

best stated by Motorola, “[w]hile it may be tempting for the Commission to ‘wash its hands’ of the problems that [private wireless] users sometime create, the FCC’s spectrum management obligations prevent it from deciding their regulatory fate on the basis of administrative convenience.”<sup>8</sup>

Yet, while Boeing concurs with commenters that the Commission should maintain the mechanisms of coordination and shared use for private spectrum, it nonetheless agrees with MRFAC that the instant proceeding provides the Commission with an excellent opportunity “to distinguish true private internal use systems from carrier type entities which are frequently included within the term private wireless.”<sup>9</sup> Like MRFAC, Boeing remains concerned that “the failure to distinguish true internal use systems from carrier type entities lies at the root of problems that today afflict the private wireless community.”<sup>10</sup>

Indeed, it is the very distinction between pure private internal spectrum users and carrier type entities that contradicts AMTA’s and Nextel’s arguments advocating that the Commission auction private spectrum.<sup>11</sup> Boeing also takes umbrage with Nextel’s characterization of the FCC’s current private wireless licensing practices as a corporate welfare program and its offensive allegation that Boeing obtains “free spectrum at the American public’s expense.”<sup>12</sup> Nextel’s self interested comments wholly disregard the fact that Boeing, unlike Nextel, is not a communications carrier that derives revenue directly from the utilization of its spectrum. Rather,

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USMSS at 12 (“The USMSS does not, however, advocate having band managers operate in existing spectrum as licensees – nor would we support the concept of band managers bidding at auction for existing spectrum.”).

<sup>8</sup> Comments of Motorola at 15.

<sup>9</sup> Comments of MRFAC at 3.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> Comments of American Mobile Telecommunications Association at 14 (Aug. 2, 1999); Comments of Nextel Communications, Inc. at 1 (Aug. 2, 1999).

<sup>12</sup> Comments of Nextel Communications, Inc. at 4, 16.

Boeing's private internal radio licenses are used to fulfill highly specialized and critical communications needs for which commercial service is either unsuitable, economically impractical, or simply unavailable. Boeing, like thousands of other private wireless users who employ their own internal systems, relies on private radio spectrum to protect the safety of life, health and property, and to meet the specialized and critical needs of its day-to-day business operations.

As it has stated previously, from a business perspective, Boeing believes that the benefits of private radio use are intrinsically woven into the fabric of the American economy. Private wireless spectrum offers a productivity and safety tool without substitute, which increases the competitiveness and effectiveness of American businesses. To suggest that the American public does not benefit from this increased competitiveness is wholly without merit.

Focusing on the specific issue of spectrum use by large industrial concerns, the comments of Small Business in Telecommunications recognize this public benefit and urge the Commission to acknowledge that such private industrial spectrum use is "beneficial to the economic well being of the whole Country" and that "the public interest is served by the cost effective manufacture and delivery of goods to the public."<sup>13</sup> Boeing strongly agrees with this assessment of the utility and public good derived from such private-internal wireless use.

Perhaps this issue was best summarized by the comments of Commonwealth Edison Company which explained that private wireless licensees are "using spectrum in order to run their businesses and this spectrum is not a direct part of their product or service offerings . . . This differs from commercial communications service providers that use spectrum as a critical part of the very product or service they are selling as communications entities. The spectrum is needed to generate business and thus, revenue. It makes sense, therefore that this subscriber

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<sup>13</sup> Reply Comments of Small Business in Telecommunications at 10 (Sept. 15, 1999).

based spectrum is not given away for free. The same cannot be said for private radio licenses. . .”<sup>14</sup> Boeing firmly believes this analysis and suggests that the Commission view Nextel’s comments as yet another means to capture and commercialize spectrum allocated for private wireless licensees.

In sum, Boeing urges the Commission to recognize that an overwhelming number of commenters are opposed to the use of competitive bidding for the allocation of private wireless spectrum. Boeing therefore implores the Commission to implement the Balanced Budget Act amendments, as Congress intended it to, in a manner that acknowledges that auctions are inherently improper for pure private wireless users.

Respectfully submitted,

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<sup>14</sup> Comments of Commonwealth Edison Company at 13.