

DOCKET FILE COPY ORIGINAL RECEIVED

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

APR 10 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)
)
Implementation of Section 3(n) and)
322 of the Communications Act)
Regulatory Treatment of Mobile)
Services)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PR Docket No. 93-133
RM-8117, RM-8030
RM-8029

GN Docket No. 93-252

PP Docket No. 93-253

To: The Commission

COMMENTS

Mobex Communications, Inc. ("Mobex") hereby respectfully submits its Comments in response to the Petition for Reconsideration ("Petition") filed by the American Mobile Telecommunications Association, Inc. ("AMTA") on January 19, 2000.¹ AMTA's Petition requested the reconsideration of one aspect of the Federal Communications Commission's ("the Commission") Memorandum Opinion and Order released on October 8, 1999.² Specifically, AMTA urged the Commission to "reconsider and reverse its decision in respect to the timing of payment to incumbents whose systems are 'retuned' pursuant to FCC Rule Section 90.699."³

¹ *Petition for Reconsideration*, American Mobile Telecommunications Association, Inc., PR Docket No. 93-133 (Published January 19, 2000).
² *Memorandum Opinion and Order on Reconsideration*, PR Docket No. 93-144, 64 Fed Reg. 71042, (rel. Oct. 8, 1999) ("MO&O" or "Order").
³ *Petition for Reconsideration*, American Mobile Telecommunications Association, Inc., PR Docket No. 93-133 (Published January 19, 2000), pg. 2.

AMTA recommends that the Commission adopt a system of progress payments from the EA licensee to the relocating incumbents. Mobex urges the Commission to embrace this policy.

I. INTRODUCTION

1. Mobex is a provider of dispatch service utilizing primarily 800 MHz SMR authorizations granted by the Commission. Mobex serves customers located in more than twenty states. By virtue of its location within the upper 200 channel block of 800 MHz spectrum, Mobex's interest in this proceeding is substantial.

2. The instant proceeding pertains to the relocation of incumbents from the Upper 200 800 MHz channels. Through the new 800 MHz licensing framework, the Commission established a process whereby current incumbents would be relocated through either voluntary or mandatory relocation from those frequencies by the Economic Area ("EA") auction winner. FCC Rule 90.699 establishes a one-year voluntary negotiation period, followed by a one-year mandatory period, after which the EA licensee will still retain the right to relocate incumbents to other spectrum as long as the EA licensee is able to provide "comparable facilities." Currently, the industry has entered the one-year mandatory negotiation period, with the voluntary period having ended on December 3, 1999.

3. AMTA is correct in stating that to the best of its knowledge, "the relocation process to date has proceeded without significant problems."⁴ It is worth noting that numerous parties reached agreements with EA licensees during the voluntary period. AMTA also observes that it, "is reasonable to assume that a significant percentage of upper 200 incumbent arrangements will

⁴ Id. at para. 3.

have been reached before the involuntary period commences.”⁵ However, for the reasons discussed below, Mobex agrees with AMTA that the proposed Order burdens small businesses with an enormous and perhaps insurmountable economic hardship. The requirement that incumbents pay for relocation and *then* be reimbursed is contrary to the public interest.

II. THE COMMISSION’S DECISION WILL HURT SMALL BUSINESSES.

4. By requiring the incumbents to cover the costs of relocation and then be reimbursed by the EA licensee, the Commission will hurt small businesses. Many of the incumbents in the Upper 200 Channel Block are small businesses.

5. The Personal Communications Industry Association (“PCIA”) has previously filed Comments in this proceeding which voice this same concern.⁶ PCIA urges the Commission to view the issue of progress payments from the incumbent’s perspective. PCIA correctly states that, “[t]o expect businesses of this size to pay tens of thousands of dollars out of their own bank accounts upfront is unrealistic. First, most SMR operators in this position simply do not have the cash on hand. Second, there’s absolutely no reason that such small businesses should seek to obtain bank financing to cover costs imposed by the Commission and the EA licensee.”⁷

6. PCIA raises two very cogent points. Small businesses should not be forced to pay the significant costs associated with an externally mandated obligation. In addition, this mandated cost benefits the EA licensee, *not* the incumbents.

⁵ *Id.*

⁶ See *Comments, Personal Communications Industry Association, PR Docket No. 93-144* (Published March 15, 2000).

7. It is important for the Commission to note that the relationship between the incumbents and EA licensee is not that of equal parties. Rather, the incumbents consist almost entirely of small businesses. Whereas EA licensees are generally large businesses which maintain the financial stability and infrastructure to manage these relocations, the small business incumbents can hardly match this capability. Regarding the nature of incumbents, PCIA notes that “[t]he retuning process is not one which can be readily accomplished by these companies; they do not have scores of technicians on staff waiting for the next project. Rather, most of these companies employ at most a handful of technicians, who now must work overtime to accomplish the sizeable task at hand.”⁸

8. In the event the Commission requires incumbents to front these relocation costs, monetary disputes arising from any relocation will likely impact incumbents on a far greater scale than by the EA licensees. Whereas EA licensees may have time on their side in resolving these disputes, most small businesses participating in the mandatory relocation will likely have leveraged their future in order to effectuate retuning. The end result may be that incumbents will be forced into settling a claim to obtain cash in hand, as opposed to facing the prospect of a protracted dispute. Furthermore, it is interesting to note that both AMTA and PCIA allude to the fact that many incumbents have opted to sell their systems to the EA licensees rather than bear the significant cost and turmoil of relocation.⁹

7 Id. at 4.

8 Id. at 3.

9 See AMTA Comments, FN 3; PCIA Comments, pg. 4.

III. CONCLUSION

For the foregoing reasons, Mobex urges the Commission to adopt the proposal put forth by AMTA, and adopt a system of progress payments to the incumbents. Mobex believes that by requiring the incumbents to cover the costs associated with relocation and subsequently be reimbursed by the EA licensee, the Commission will hurt small businesses.

MOBEX COMMUNICATIONS, INC.

By: *Kevin G. Rupy*
Kevin G. Rupy
Mobex Communications, Inc.
1150 18th Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 861-9484

Dated: April 10, 2000.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMMENTS was served this 10th day of April, 2000 by hand delivery to:

Alan R. Shark, President
American Mobile Telecommunications Association, Inc.
1150 18th Street, N.W.
Suite 250
Washington, D.C. 20036

Magalie R. Salas (Original and 11 Copies)
Secretary
Federal Communications Commission
445 Twelfth Street, S.W. TW-A325
Washington, DC 20554

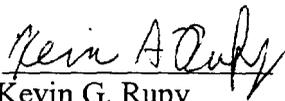
and:

International Transcription Service
1231 20th Street, N.W.
Washington, DC 20036

and by First Class Mail:

Elizabeth R. Sachs, Esq.
American Mobile Telecommunications Association, Inc.
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W.
Suite 1200
Washington, D.C. 20036

Rob Hoggarth
Vice President, Government Relations
Personal Communications Industry Association
500 Montgomery Avenue
Suite 700
Alexandria, Virginia 22314-1561

By: 
Kevin G. Rupy