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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 101 of the Commission's)
Rules to Streamline Processing of Microwave)
Applications in the Wireless)
Telecommunications Services)
)
Telecommunications Industry Association)
Petition for Rulemaking)

WT Docket No. 00-19

RM-9418

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

I. INTRODUCTION AND SUMMARY

SBC Communications Inc. (SBC) submits this Reply to comments filed in response to the Notice of Proposed Rulemaking (NPRM) in the above-referenced proceeding.

SBC generally supports the Commission's efforts to eliminate Part 101 regulations that are "duplicative, outmoded, or otherwise unnecessary" and submits these Reply Comments primarily to urge the Commission to adopt Option IV of the Commission's proposals for implementing the Balanced Budget Act.

II. DISCUSSION

A. Auctioning of Part 101 Spectrum

The Commission listed several options that could be pursued to implement the Balanced Budget Act and solicited additional suggestions. As the Commission notes,

the Balanced Budget Act amendment to Section 309(j) provides that all mutually exclusive applications for initial license or construction permits *shall* be auctioned, except licenses and construction permits for public safety radio services, digital television service for existing analog television licensees, and noncommercial educational radio and television stations.¹

¹ NPRM at ¶ 11.

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Nevertheless, the Commission is obligated to “use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.”² For the reasons discussed below, the Commission should adopt Option IV, which is to maintain the current licensing approach and to establish new competitive bidding procedures to resolve mutually exclusive applications.

In the NPRM, the Commission states the most compelling reason for adopting Option IV. In paragraph 75, the Commission notes that microwave spectrum above 2GHz is licensed by channel or channels and site-by-site and that “[a]pplicants are responsible for coordinating interference issues prior to filing a license application.”³ Importantly, the Commission observed that “under the current licensing scheme, mutually exclusive situations rarely, if ever, occur.”⁴

The comments addressing this issue confirm the Commission’s observation. Those commenters who addressed this issue unanimously opposed replacing the current system with competitive bidding. Their rationale is simply that the current system works for all stakeholders.

The current system promotes efficient use of the microwave spectrum. Under the current system, careful engineering, and the use of a frequency coordinator has virtually eliminated mutually exclusive applications while enabling carriers to obtain the channels needed to serve the public. When a rare conflict arises, carriers often reach a negotiated solution, which lowers the demands placed on the Commission’s already scarce resources.

² 47 U.S.C. § 309(j)(6)(E).

³ NPRM at ¶ 75.

⁴ *Id.*

There is no compelling reason to change the current system. Option IV leaves the current system in place and reserves competitive bidding for those very rare situations in which mutually exclusive applications are submitted.

B. POFS⁵ Licensees Carriage of Common Carrier Traffic

1. POFS licensees should not be allowed to carry common carrier traffic.

The NPRM seeks comment on whether it should eliminate the rule prohibiting stations licensed as private systems from offering common carrier communications services.⁶ To date, the Commission has declined to eliminate the prohibition because the issue lacked a sufficient record.⁷ The state of the record has not materially changed. Therefore, the prohibition should be maintained.

The Fixed Wireless Communications Coalition (FWCC), Nextel Communications, Inc. (Nextel), and Stratos Offshore Services Company (Stratos) primarily argue that eliminating the prohibition would promote more efficient use of spectrum.⁸ This argument is not persuasive because it incorrectly assumes that there is no means by which excess capacity can be put to use. POFS carriers desiring to carry common carrier traffic may do so by becoming common carrier licensees. Accordingly, the issue is not about efficient use of spectrum, but, rather, applying the appropriate regulatory scheme.

⁵ Private operational fixed microwave services.

⁶ NPRM at ¶ 36.

⁷ *Id.*

⁸ FWCC Comments at 25; Nextel Comments at 5; Stratos Comments at 17.

Providers of similar services should be subject to the same regulatory requirements. Allowing POFS carriers to offer common carrier services without being licensed as common carriers creates an unfair regulatory advantage in favor of POFS carriers.

2. The Commission should not make any exceptions.

In the event the Commission retains the general prohibition against POFS carriage of common carrier traffic, as it should, the Commission proposes an exception, which would permit grandfathering of private operational fixed microwave systems providing common carrier services for their connecting facilities, or for Commercial Mobile Radio Service (CMRS) providers that were formerly private land mobile radio service providers.⁹ SBC opposes this proposal.

Only one commenter, Nextel, addressed this proposal. Nextlink's support for this proposal is not surprising because Nextel would be a primary beneficiary of its adoption.

Nextlink is a Specialized Mobile Radio (SMR) systems operator that connects to the public switched telephone network. SMR licenses were reclassified as CMRS effective August 1996. The conversion period for these operators has been expired for many months. Accordingly, the operators the Commission seeks to grandfather, including Nextlink, have been improperly using POFS licenses for common carrier services.

The Commission's proposal would allow these operators to profit from their improper conduct. Additionally, allowing common carrier operation in the 1850-1990 MHz band will provide an incentive for those operators to remain in the band and potentially disrupt the roll out of services by the PCS licensees. The Commission should not adopt this proposal.

⁹ NPRM at ¶ 38.

C. Use of 10.7 – 11.7 GHz Frequencies for Final Link

The NPRM seeks comments on CAI Wireless Systems, Inc.'s (CAI) request that the Commission eliminate its prohibition against using POFS frequencies for the final radio frequency link in the chain of transmission of program material to CATC, MDS, or MATV systems.¹⁰ Specifically, the NPRM seeks comment on whether CAI's proposal is in the public interest.¹¹

The American Petroleum Institute (API) is the only commenter that addressed this issue. API urged the Commission to reject CAI's proposal.¹² CAI's proposal is not in the public interest and SBC joins CAI in urging the Commission to reject it. The 11 GHz band is one of the bands identified for 2 GHz relocations. Once the final rules for the 2.1 GHz band have been decided, it will be important to have suitable frequencies available for all relocations from the 2 GHz band. Allowing use of this band by CATV, MDS or MATV systems will unnecessarily limit the relocation possibilities for the existing 2 GHz licensees.

D. Conditional Authorization of 23 GHz Band

The NPRM seeks comment on the Commission's decision to decline to propose any rules changes for conditional licensing in the 23 GHz band until the Commission and NTIA have an agreement regarding conditional licensing of those frequencies.¹³ The current restrictions on the use of conditional authorization significantly impede the deployment of 23 GHz systems. Nevertheless, since the band is shared with Federal Government operations, SBC agrees with the

¹⁰ NPRM at ¶ 52.

¹¹ NPRM at ¶ 53.

¹² API Comments at 9.

¹³ NPRM at ¶ 61.

decision to refrain from acting at this time. SBC encourages the Commission to give high priority to working out an agreement with NTIA.

III. CONCLUSION

For the foregoing reasons, the Commission should:

- adopt Option IV;
- maintain the prohibition on POFS licensees carriage of common carrier traffic;
- make no exceptions to the prohibition on POFS licensees carriage of common carrier traffic;
- reject CAI's proposal to use POFS frequencies for the final radio frequency link in the chain of transmission of program material to CATC, MDS, or MATV systems;
and
- refrain from proposing any rules changes for conditional licensing in the 23 GHz band until the Commission and NTIA have an agreement regarding conditional licensing of those frequencies.

Respectfully submitted,

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August 4, 2000

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CERTIFICATE OF SERVICE

I, Peggy Owen, do hereby certify that a copy of **Reply Comments of SBC Communications, Inc.** has been served on the parties attached via postage-prepaid on this 4th day of August 2000.

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