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April 9, 2001

Magalie Roman Salas, Secretary
Federal Communications Commission
Washington, DC 20554

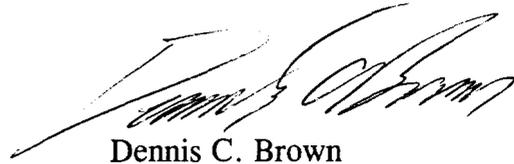
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Gentlemen:

Enclosed herewith is a floppy disk containing the Reply Comments of Mobex Communications, Inc. in ET Docket No. 00-221.

Thank you for your attention to this matter.

Very truly yours,



Dennis C. Brown

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Reallocation of the 216-220 MHz,
1390-1395 MHz, 1427-1429 MHz,
1429-1432 MHz, 1432-1435 MHz,
1670-1675 MHz, 2385-2390 MHz
Government Transfer Bands

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ET Docket No. 00-221
RM-9267
RM-9692
RM-9797
RM-9854

To: The Commission

REPLY COMMENTS

MOBEX COMMUNICATIONS, INC.

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April 9, 2001

ORIGINAL

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SUMMARY OF THE FILING

The status of the Low Power Radio Service should be preserved. No party showed that primary status for LPRS is necessary or even possible without undesirable consequences for LPRS users.

No allocation in the 216-220 MHz band appears to be necessary for surveying. Parties commenting concerning surveying indicated that surveying is progressing successfully on currently allocated frequencies.

Broadcaster comments suggesting indefinite delays should be disregarded. Broadcasters have had a full opportunity to do any testing which they may have desired and to present the results of their tests to the Commission in their initial comments.

Mobex Communications, Inc. agrees with other commentors that the Commission must clearly specify the costs of relocating government facilities before any auction. The Commission would be well advised to consider favorably the comments of AT&T Wireless Services, Inc. on the subject of frequency relocation.

Licensees in the 218-219 MHz band failed to demonstrate that any substantial actual use of that allocation had been made. In view of the apparent inability of the authorized service in that band to provide any substantial service, the Commission should restore the allocation for AMTS frequency groups C and D.

Amateur Radio Service commentors admitted that the Amateur community had not made extensive use of the Amateur allocation in the 216-220 MHz band, therefore, there is no need for any additional Amateur allocation in the band and there was no demonstrated need for any change in the applicable service rules.

The comments of Warren Havens went well outside the frequency bands at issue in the instant proceeding. Therefore, those comments should be disregarded.

Further allocations in the band 216-220 MHz should be modeled on the AMTS allocation. Competitive bidding for licenses should be modeled on the VHF Public Coast auction.

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

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Reallocation of the 216-220 MHz,)	ET Docket No. 00-221
1390-1395 MHz, 1427-1429 MHz,)	RM-9267
1429-1432 MHz, 1432-1435 MHz,)	RM-9692
1670-1675 MHz, 2385-2390 MHz)	RM-9797
Government Transfer Bands)	RM-9854

To: The Commission

REPLY COMMENTS

Mobex Communications, Inc. (Mobex) and its subsidiary, Regionet Wireless License, LLC (Regionet) hereby respectfully submits its Reply Comments in the above captioned matter. In support of its position, Mobex shows the following.

Mobex replies to

- 1) Parties suggesting a change in status of the Low Power Radio Service;
- 2) Parties suggesting an allocation in the 216-220 MHz band for surveying;
- 3) A broadcast trade association;
- 4) Parties expressing concern about relocation of incumbent government spectrum users;
- 5) Parties expressing hope for the 218-219 MHz band;
- 6) An Amateur Radio association; and
- 7) Parties with interests outside of the 216-222 MHz band.

The Status of the Low Power Radio Service Should Not be Changed

Of the nearly 800 comments filed, most were by individuals who were of the mistaken belief that an auction of spectrum in the 216-220 MHz band would result in loss of use of the spectrum for Assistive Listening Devices (ALD), *e.g.*, Alison Stroud (“Eliminating the frequency bands currently utilized by FM systems for the hearing impaired department is an issue that I strongly oppose.”) Neither the Commission nor any commentor proposed impairing the secondary use of the band by the Low Power Radio Service (LPRS). Deaf-Hearing Communication Centre, Inc. (Centre) recommended that the Commission “maintain the use of frequency bands 216-217 MHz for use by hard of hearing citizens with FM technology.” Mobex agrees with Centre and shares the concerns of ALD users. In its Comments, Mobex expressly recognized the continuing need for use of the band by the LPRS.

Many of the LPRS users told the Commission of their concern that an auction of 216-220 MHz band spectrum would result in interference to ALD use. Only a small number of the individual LPRS users’ comments gave any indication that they had suffered interference to their ALD systems in the 216-217 MHz band. Indeed, most expressed a high degree of satisfaction with use of the 216-217 MHz LPRS band. Some reported interference from “fax signals and cellular telephone calls,” comments of Linda Boylan, but those commentors did not make clear in which frequency band they had received interference. Neither fax machines or cellular telephones are authorized to operate in the 216-217 MHz band.¹ At least one

¹ Spurious signals from defective equipment can occur in any frequency band and should not affect frequency allocation decisions.

commentor suggested that her 216-217 MHz band system had received interference from unauthorized users, comments of Jennifer M. Hulme. As the Commission knows, unauthorized users are to be found in every frequency band and cannot rationally be considered in the allocation of frequencies for authorized use. Most meaningfully, from its survey of 400 members, the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell) reported that “in the 216-217 MHz band, interference has heretofore been nonexistent,” AG Bell comments at 5. Given the large number of survey responses reviewed by AG Bell, the Commission should give close attention to AG Bell’s comments concerning interference.

While some commentors requested that the “LPRS be elevated to Primary Status,” George DeVilbiss; InstanTel, Inc.; Self Help for Hard of Hearing People (SHHH); United Telecom Council and American Public Power Association; and Hearing Industries Association (HIA), none presented any substantial reason for the request. InstanTel stated that “the Commission’s evaluation of the public interest should include consideration of the interests of authorized incumbent unlicensed users,” InstanTel at 5, but all current LPRS users have been informed at the point of purchase that they “must accept any interference received, including interference that may cause undesired operation,” 47 C.F.R. §95.1017.² Therefore, incumbent LPRS users are not in a position to demand any protection against interference.

² All of the categories of LPRS users enumerated at 47 C.F.R. §90.1009 were similarly placed on notice as to their secondary status at the point of purchase.

The record of satisfactory secondary status service reported by AG Bell demonstrates that there is no need for the Commission to change the status of the LPRS.

HIA's position that primary status does not require individual licensing, HIA comments at 12, is not supported by experience. Without the ability to know the location of each facility which must be protected from harmful interference, a co-primary user cannot reasonably be expected to provide protection. HIA's suggestion at page 15 of its comments that other users of the 216-217 MHz band should be required to keep records of where their units are deployed conflicts with HIA's position that LPRS should be given primary status with no requirement for allowing a co-primary user to ascertain the location of LPRS users. HIA's position would, in fact, provide LPRS users with a super-primary status, able to claim protection at unspecified locations while requiring all others to record their locations.

HIA suggested that the blanket licensing of the Citizens Band, VHF-FM marine radios, and the Family Radio Service have been successful, but none of those services is co-primary to any other Radio Service. Thus, those instances do not support HIA's position.

The suggestion of Fairfield Industries, Inc. (Fairfield) that "upgrading secondary services in the 216-220 MHz band need not impact those primary users already authorized," Fairfield comments at 12, because existing users would be protected by the "first-in-time principle," *id*, is not correct under any conceivable set of circumstances. This is no assurance that the Commission would apply the first-in-time principle to the 216-220 MHz band.

Rather, the Commission might require all co-channel licensees to just get along with each other as it generally does under its Part 90 Rules. But if the Commission applied the first-in-time principle, competitive bidding for AMTS licenses would be severely compromised, because LPRS users, authorized by rule before an auction, would claim that they were entitled to priority over auction winners. And, if the Commission applied the first-in-time principle, it would promote an inestimable amount of litigation over who was entitled to priority.

Though the matter is not free from doubt, it is possible that if the Commission established the LPRS as a primary service, the Commission could be required by the 1997 Budget Act to conduct competitive bidding for licenses and ALD users could be required by the National Defense Authorization Act of 1999 to contribute to frequency relocation of the Navy's SPASUR system. Electronic Tracking Systems, L.L.C. appeared to recognize these concerns when it stated that it supported "primary status so long as it does not adversely affect [law enforcement tracking systems'] continued ability to be licensed by rule," ETS comments at 20.³ For those reasons, the Commission should refrain from considering primary status for the LPRS.

Mobex believes that the LPRS should retain its secondary status. However, going beyond other commentors in its concern for the hearing disabled, Mobex stated in its Comments that if the Commission adopts Mobex's request to return the Group C and D

³ Each of the exceptional cases of "blanket licensing" cited by ETS was pursuant to specific Congressional authority.

frequency blocks to AMTS use, “the Commission should require the persons obtaining geographic area AMTS licenses in the 216-217 and 218-219 MHz bands to accept responsibility for either remedying any actual interference to existing LPRS users or relocating existing LPRS users to different frequencies. Mobex would readily accept such an obligation.” Mobex stands by its initially stated position.

No Allocation Appears to be Needed For Surveying

Trimble Navigation Limited (Trimble); Pacific Crest Corporation (Crest) and Association of Public-Safety Communications Officials-International, Inc. (APCO) suggested that the Commission should allocate the 216-220 MHz band for Real-time Kinematic (RTK) land survey equipment. Although Crest and APCO stated that Public Safety users had difficulty obtaining frequencies for RTK use, neither suggested that Public Safety users could not use the services of commercial RTK surveyors to meet their needs. Trimble explained that “approximately forty percent of the domestic U.S. market is comprised of federal, state, county and city government agencies,” Trimble at 4. Obviously, these governmental agencies are able to meet their needs through the services of commercial vendors.

No commentor provided any basis for believing that use of the 216-220 MHz band was necessary to RTK service.⁴ No commentor even suggested that the 216-220 MHz band was uniquely suited to the service.

⁴ APCO stated that there were approximately 25,000 RTK units operating within the United States and Crest appears to agree. Trimble stated that there were approximately 30,000 users in the United States. Obviously, they have already found some frequency band in which to operate. Crest’s projection of 40,000 units by 2004 did not appear to be based on use of the band 216-220 MHz.

Trimble presented no basis for the amount of spectrum which it requested. Were the Commission to allocate any of the 216-217 MHz band to RTK use, it would severely diminish the interest of anyone in competing for a license to use the groups C and D AMTS frequencies. RTK's scheme to capture only frequencies which were not shared with SPASUR (without participating in competitive bidding) would saddle an AMTS operator with a burden to compensate the federal government for relocation of SPASUR without obtaining a suitable amount of contiguous, exclusive use spectrum which was not subject to the compensation requirement. Therefore, RTK's scheme would cut the heart out of at least one of the two remaining AMTS frequency blocks and cut the heart out of competitive bidding for the spectrum.

Comments of National Association of Broadcasters Were Disingenuous and Dilatory

National Association of Broadcasters (NAB) suggested that any technical changes to the 216-220 MHz band should be delayed "until high-volume, mass-produced digital television receivers have been thoroughly tested," NAB at 5. Mass produced digital television receivers are available now and NAB could have conducted any tests which it desired to make and presented them to the Commission in its comments. That NAB chose not to do so simply indicates that NAB's suggestion was disingenuous and merely dilatory.

NAB and the Grand Alliance had a full opportunity to consider the potential for interference to digital television broadcasting during the design of the digital transmission standard adopted by the Commission. If they considered the potential for interference from

AMTS systems during the design stage, then NAB should have presented the results of any study which was performed. Since NAB did not present any technical showing, it is reasonable to conclude that broadcasters failed to consider the potential in their design of a digital transmission standard. While digital broadcasters should receive the same level of protection which analog broadcasters receive, digital broadcasters should recognize that their mode of transmission is the “last man in” and NAB is not positioned to demand any greater protection for digital television than television broadcast stations have received heretofore.

Whether digital receivers are ever produced in a high volume is not relevant to ascertaining the potential, if any, of AMTS signals to digital television signals. As NAB is surely aware from its experience with the consumer acceptance of color television, a high volume of digital receiver production will require the entrepreneurial zeal of the local broadcaster and the broadcast networks to provide digitally transmitted programs which will attract an audience away from their standard programming fare. The provision of new, competitive Commercial Mobile Radio Service should not be limited by the pace at which the broadcast community chooses to promote or not promote digital television.

Relocation of Government Facilities Requires Careful Attention

Mobex agrees with Motorola, Inc. that the Commission must “clearly specify relocation costs before any auction of reallocated Government spectrum subject to mandatory reimbursement,” Motorola comments at 7. Mobex does not agree with Motorola’s suggestion that relocation compensation come directly from auction revenues. As Motorola indicated,

such a scheme is not currently authorized by statute and at this point the Commission is obligated to work within the statutes which exist.

Mobex agrees fully with the comments of AT&T Wireless Services, Inc. It is clear that AT&T has considered relocation issues thoroughly and the Commission should act in accord with AT&T's suggestions.

Imposing a cost at the threshold which may never be necessary would not serve the public interest. Before any auction, the Commission and National Telecommunications and Information Administration should first determine whether, in fact, a government user has any intention to relocation. If the government user has no intention to relocate, then NTIA should so inform the Commission and the Commission should declare that there will be no relocation compensation required. Too, the Commission should fully inform potential competitive bidders of an established cap on the costs which could be imposed if the government user desired to reclaim the original spectrum.

Restoring the Full AMTS Allocation Would Best Serve the Public Interest

Celtronix Telemetry, Inc. (Celtronix) informed the Commission that it was one of only two companies that has deployed a commercial network operating in the 218-219 MHz band.⁵

⁵ One may assume that the other is commentor Datex Spectrum, L.L.C., although Datex says that it is "in the business of acquiring 218-219 MHz licenses," Datex at 1, rather than actually providing any service. It is also possible that the other is commentor In-Sync Interactive Corporation (In-Sync), but In-Sync stated that its "services will soon be delivered to the consumer and commercial markets," In-Sync comments at 2.

Celtronix's position hardly contradicts Mobex's statement that the 218-219 MHz service has been unsuccessful. If there are only two commercial networks⁶ operating, nine years after the spectrum was allocated to the purpose, the Commission should recognize that restoring the AMTS allocation would make the highest and best use of the scarce spectrum resource.

Amateurs Need No More Spectrum and No Change in Service Rules

Mobex does not oppose continuation of the secondary allocation of the 219-220 MHz band to the Amateur Radio Service, but strongly opposes any change in the Amateur allocation or the service rules. Amateur Radio Relay League (ARRL) admitted that, to date, Amateurs have not made much use of the 219-220 MHz band, but ARRL requested that the entire 216-220 MHz band be made available for Amateur use on a secondary basis. In light of ARRL's admission that Amateurs are not widely using the existing allocation, there is no reasonable basis for expanding the allocation to include more spectrum.

Amateur licensee Tom Russel stated that "there are no technically defensible reasons for any allocations at all" in the 216-220 MHz band. Although Mobex does not request elimination of the allocation, Mobex certainly agrees with Russel that "elimination of the secondary amateur allocation in the 216-220 would eliminate a potential source of interference to commercial and government stations, and may make the band more attractive for commercial interests willing to pay for the allocation," Russel comments at 3.

⁶ Celtronix did not disclose the extent of either existing network.

Amateur service rules are not at issue in the above captioned proceeding. In the interest of completeness, however, Mobex states that ARRL has shown no basis for amending the existing coordination requirements.

Havens's Comments Were Outside the Scope of the Proceeding

The comments of Warren Havens (Havens) go well outside the scope of the above-captioned proceeding and should be disregarded. While the above-captioned rule making proceeding is limited to the frequency band 216-220 MHz, Havens would have the Commission consider a hypothetical reallocation of the band 216-225 MHz for a fancifully described environmental (including wildlife) monitoring service. However, Havens presented no indication of any need for such a service, even if an allocation outside of the band 216-220 MHz could be considered in the instant proceeding. Havens would have licensees be provided with "special tax breaks," although the Commission has no authority to provide such corporate welfare. Because Havens's suggestion lies outside of the bounds of the above captioned proceeding and would rely on incentives which the Commission has no authority to grant, Havens's comments should be rejected.

AMTS Allocations Should be Based on Current Maritime Allocations

AMTS is a well established Maritime service in the 216-220 MHz band. Securicor Wireless Holdings, Inc. showed no reason why future licensing of the 216-220 MHz band should resemble the licensing of the 220-222 MHz band, rather than resembling the model of VHF Public Coast licensing proposed by the Commission. AMTS channels are well

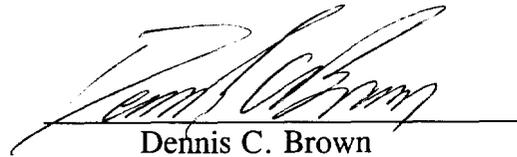
established at 25 kHz bandwidths and breaking them into smaller segments by allocation would not serve the public interest in any way. If an AMTS licensee chooses to use or to disaggregate a 5 kHz wide band of spectrum, the Commission should permit the licensee to do so, but there is no reason to depart from the existing 25 kHz wide channel allocation for conducting competitive bidding for geographic area licenses.

Securicor suggested a limitation on incumbent AMTS operators that surely could not stand appellate review. Securicor suggested that incumbents be required to serve waterways, while geographic area licensees would not be subject to such requirements. As the Commission surely learned from its experience in the 800 MHz band SMR field, the Commission must provide parity of operating rights as between incumbents and geographic area licensees. Therefore, Securicor's suggestion should not be considered in any way.

Conclusion

For all the foregoing reasons, Mobex respectfully requests that the Commission take actions in the above captioned matter which are consistent with the positions which Mobex has presented herein and in its initial Comments.

Respectfully submitted,
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Dated: April 9, 2001