

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

In the Matter of)	
)	
Reallocation of the 216-220 MHz,)	WT Docket No. 02-08
1390-1395 MHz, 1427-1429 MHz,)	RM-9267
1429-1432 MHz, 1432-1435 MHz,)	RM-9692
1670-1675 MHz, and 2385-2390 MHz)	RM-9797
Government Transfer Band)	RM-9854
)	RM-9882

**JOINT REPLY COMMENTS OF
SMR ADVISORY GROUP, LC AND BIZCOM USA, INC.**

**SMR ADVISORY GROUP, LC
BIZCOM USA, INC.**

By: Laura C. Mow
GARDNER, CARTON & DOUGLAS
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
(202) 408-7100

March 18, 2002

Its Attorneys

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

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, and 2385-2390 MHz Government Transfer Band)	WT Docket No. 02-08 RM-9267 RM-9692 RM-9797 RM-9854 RM-9882

To: The Commission

**JOINT REPLY COMMENTS OF
SMR ADVISORY GROUP, LC AND BIZCOM USA, INC.**

SMR Advisory Group, LC (“SMR Advisory”) and BIZCOM USA, Inc. (“BIZCOM”), by their counsel and pursuant to Section 1.415 of the Commission’s Rules, hereby jointly submit reply comments on the Notice of Proposed Rulemaking, FCC 02-15, released on February 6, 2002 in the above-captioned proceeding.¹ In the NPRM, the Federal Communications Commission (“FCC” or “Commission”) proposes new service rules for licensing 27 megahertz of spectrum from the 216-220 MHz, 1390-1395 MHz, 1427-1429.5 MHz, 1429.5-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz bands. With respect to the 216-220 MHz band in particular, the Commission seeks comments on a proposal filed by Securicor Wireless Holdings, Inc. (“Securicor”) that the Commission auction all unlicensed spectrum or “white space” in the 218-220 MHz band utilizing a band plan compatible with the plan established for the 220-222

¹ Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands, Notice of Proposed Rulemaking, WT Docket No. 02-8, FCC 02-15 (released February 6, 2002) (the “NPRM”).

MHz band.² In addition, the Commission requests comments on a proposal submitted by Warren Havens (“Havens”) seeking to create a new “Advanced Technologies 220 MHz Service” in the 218-225 MHz band.³

Among those parties commenting on Securicor’s and Havens’ proposals were Datex Spectrum, L.L.C./U.S. Telemetry Corporation (“Datex/UST”), Mobex Communications, Inc. (“Mobex”) and Paging Systems, Inc. (“PSI”). These commenters, for various reasons, oppose each of Securicor’s and Haven’s proposals. As discussed more fully below, SMR Advisory and BIZCOM agree with Securicor that the Commission should auction the “white space” currently existing in the 218-220 MHz band, employing rules similar to those governing the 220-222 MHz band. Further, SMR Advisory and BIZCOM join with those commenters opposing Haven’s proposal to reallocate the entire 216-220 MHz.

I.

INTRODUCTION

SMR Advisory manages and holds interests in approximately 210 licensed systems in the 220-222 MHz band covering approximately 175,000,000 of the U.S. population and utilizing

² Comments of Securicor Wireless Holdings, Inc., ET Docket No. 00-221 at p. 5-6 (filed March 8, 2001) (“Securicor Comments”). The Securicor Comments initially were filed in the earlier phases of this proceeding in which the Commission considered the reallocation of several spectrum bands, including the 216-220 MHz bands. Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1435 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, Report and Order and Memorandum Opinion and Order, ET Docket No. 00-221, FCC 01-382 (released January 2, 2002) (“Reallocation Report and Order”).

³ Comments of Warrant C. Havens on the Notice of Proposed Rulemaking, ET Docket No. 00-221 at 3 & 7 (filed March 8, 2001) (“Havens Comments”). The Havens Comments also were filed in the Commission’s earlier proceeding resulting in the Reallocation Report and Order.

approximately 2100 total channels in the 220-222 MHz band.⁴ Each of these 220-222 MHz systems employ 5 kHz narrowband technology. BIZCOM, an affiliate of SMR Advisory, is a developer of 5 kHz narrowband equipment. Accordingly, each of SMR Advisory and BIZCOM are intensely interested in any potential reallocation or restructuring of the adjacent 216-220 MHz band, and in particular, any proposed expansion of new and existing uses in that band.

II.

DISCUSSION

A. **The Commission Should License The Existing White Space in the 218-220 MHz Band Employing A Flexible, Market-Based Licensing Scheme.**

Securicor suggests that the Commission restructure the 218-220 MHz band to ensure a level playing field for licensees in neighboring frequency bands (e.g., the 220-222 MHz band) so that the market, rather than regulatory requirements, will determine the most efficient use of that spectrum.⁵ SMR Advisory and BIZCOM agree with Securicor that the market best determines the most efficient use of spectrum.⁶ Accordingly, SMR Advisory and BIZCOM support Securicor's proposal that the Commission auction all "white space" or unlicensed area in the 218-220 MHz band utilizing a geographic-area licensing similar to used in the 220-222 MHz band.

⁴ These licenses are drawn from Phase I and Phase II of the Commission's 220-220 MHz licensing scheme, including incumbent site specific licenses, as well as Economic Area and Regional Economic Area licenses from Phase II.

⁵ Securicor Comments at 5. The Reallocation Report and Order declined to consider Securicor's proposal for the 216-217 MHz band, concluding that any such licensing scheme would insufficiently protect Low Power Radio Service operations. Reallocation Report and Order, at para. 35. The NPRM, however, preserves Securicor's proposal with respect to the 218-219 MHz band. NPRM at para. 48.

⁶ Securicor Comments at 3.

Securicor's proposal relies, in part, on the Commission's Spectrum Policy Statement,⁷ which identified several spectrum management goals, including "(1) maximizing the value of the spectrum, both in terms of utility to the public and value at auction; (2) accommodating incumbent uses in the spectrum which provide valuable service to the public; and (3) fostering competition both within and between services, which will encourage the most economically and technically efficient use of the spectrum."⁸ SMR Advisory and BIZCOM believe that the current band plan in the 218-220 MHz band does not comport with the Commission's spectrum management goals in that it allows unused spectrum to go wasted. The existence of significant "white space" in the 218-220 MHz band suggests either that the market is not fully responsive to expanding incumbent services into those channels or that incumbent services do not have the technological capabilities or ability to expand into those unlicensed channels.

The Spectrum Policy Statement notes that commercial demand for spectrum has continued to increase dramatically over the past several years.⁹ If current incumbents in the 218-220 MHz band are not technically prepared, or if the market is not supporting their expansion in the band, then the spectrum in question is not being utilized at an optimal efficiency level. On the other hand, if the Commission were to restructure the 218-220 MHz band similar to the 220-222 MHz band, the resulting compatibility between the two adjacent bands would allow licensees in each band to optimize use of the spectrum and better ensure the spectrum's most

⁷ Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, 14 FCC Rcd 19,868 (1999) ("Spectrum Policy Statement").

⁸ See Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz Government Transfer Bands, Notice of Proposed Rulemaking, FCC 00-395, ET Docket No. 00-221 (Released November 20, 2000), at para. 6 (identifying several spectrum management goals).

⁹ See Spectrum Policy Statement, at 1-2.

efficient and valuable use. Current licensees in the 220-222 MHz band have the determination, motivation, technical capability and market strength to put the white space to use in an efficient and effective manner. By adopting a licensing scheme that would permit these licensees to participate in the 218-220 MHz band, the Commission would encourage competition between incumbent and future licensees and between services, thereby better maximizing the value of the spectrum.

The opposition to Securicor's proposal to auction the white space in the 218-220 MHz band in this manner is not persuasive. Datex/UST argues that the proposal's efficiencies are "outweighed by the need to preserve incumbent users' expectancy interests in preserving the value of licenses obtained by competitive bidding."¹⁰ Datex/UST further warns that Securicor's plan would create a "hodgepodge" of services in different geographic markets, and that the market would be too small and dispersed for investor appeal.¹¹

Datex/UST's desire to preserve the status quo, however well-intentioned, is inconsistent with the Commission's Spectrum Management Policy. The public interest is best served by efficient use of the spectrum, and maximizing potential use of the spectrum should outweigh incumbents' "expectancy interest," particularly when much of the spectrum at issue already has been defaulted once due to lack of market support. Datex/UST's desire to preserve all unlicensed spectrum in the 218-220 MHz band for existing licensees to deploy for some unspecified future use undermines the Commission's goals to promote the most efficient and valuable use of the spectrum. If the Commission accepts Securicor's proposal, Datex/UST will

¹⁰ Joint Comments of Datex Spectrum, L.L.C. and U.S. Telemetry Corporation, WT Docket No. 02-9 at p. 3 (Filed March 4, 2002) ("Datex/UST Comments").

¹¹ Id. at p. 4.

have the opportunity to participate in the auction and expand their services. Likewise Securicor and SMR Advisory will also have an opportunity to participate, thereby expanding the possibility of services that may be offered in the 218-220 MHz band.

With respect to Datex/UST's concern that Securicor's proposal would result in a market "too small and too geographically dispersed to encourage meaningful investment" in incumbent services, the very fact that unused spectrum exists already reflects a cautious investment environment. Surely, the expanded potential resulting from an auction open to more than existing incumbents would better drive the market and encourage investment. Limiting the 218-220 MHz band to the current license scheme -- in effect, reserving its use for incumbents only - - merely perpetuates the limitations on the spectrum and constitutes a far more significant damper on potential investment.

For its part, PSI objects to Securicor's proposal on the grounds that Securicor has not demonstrated why the 220-222 MHz licensing scheme should serve as a model for licensing white space in the 218-220 MHz band.¹² The licensing model provided by the 220-222 MHz band is not a novel one. Indeed, in past years, the Commission has followed a continuous trend to license spectrum by geographic area, in order to most efficiently utilize unlicensed and unused white space. In addition to 220 MHz, market-based licensing of white space has been adopted for 800 MHz, 900 MHz, and 2.6 GHz bands, among others.¹³ A similar approach to the 218-220 MHz band, therefore, is fully warranted.

¹² Comments of Paging Systems, Inc., WT Docket No. 02-8 at p. 5 (filed March 4, 2002) ("PSI Comments").

¹³ See e.g., Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service; Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Third Report and Order, PR Docket No. 89-552, FCC 97-

B. The Establishment Of A 5 kHz Channel Bandwidth Standard In The 218-220 MHz Band Is Good Policy.

Securicor’s proposal also seeks to establish a 5 kHz channel bandwidth requirement for the 218-220 MHz band.¹⁴ SMR Advisory and BIZCOM support such a requirement. It is well established that 5 kHz narrowband technology optimizes spectrum efficiency. In addition, the imposition of a 5 kHz standard would create compatibility between licensees in the 218-220 MHz and 220-222 MHz bands.

Several commenters oppose a 5 kHz channel bandwidth standard in the 218-220 MHz band. PSI, for example, argues that currently established bandwidths in the 218-220 MHz band should “not be broken into smaller segments at this point, except by the choice of the AMTS licensees....”¹⁵ Similarly, Mobex asserts that “there would be no efficiency gained by Securicor’s suggestion” and that “no purpose would be served by the Commission’s fragmenting the AMTS frequency allocation.”¹⁶ Neither of these commenters adequately accounts for the increased efficiencies to be gained by adoption of a 5 kHz channel bandwidth standard.

57 (Released March 12, 1997) (restructuring the licensing framework that governs the 220 MHz Service to a market-based system); Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Implementation of Sections 3(n) and 322 of the Communications Act -- Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Implementation of Section 309 (j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC 1463 (1995).

¹⁴ Securicor Comments at p. 6.

¹⁵ PSI Comments at p. 5.

¹⁶ Comments of Mobex Communications, Inc., WT Docket No. 02-8 at p. 4 (Filed March 1, 2002) (“Mobex Comments”). Mobex concedes, however, that while the public interest would best be served by “continuing to allocate the AMTS bands with 25 kHz channelization,” the AMTS licensee could use any bandwidth which it chooses, including, presumably, a narrower bandwidth. Id. at 5.

It is well established that narrowband technology is more spectrally efficient than broadband technology.¹⁷ The Commission's Spectrum Policy Statement dictates that the Commission's goal is to provide the most efficient use of the spectrum. A 25 kHz channel bandwidth in the 218-220 MHz band is plainly inconsistent with this goal.

Even so, Mobex raises a legitimate concern that AMTS incumbents, incorporating 25 kHz channel bandwidth, should not be subject to a 5 kHz standard for their Phase II licenses. To resolve this conflict, SMR Advisory and BIZCOM would support a very limited exception to the 5 kHz standard for AMTS licensees. In particular, SMR Advisory and BIZCOM propose that any incumbent AMTS licensees acquiring licenses in Phase II be permitted to use a 25 kHz channel bandwidth for all of their licenses, provided that the 25 kHz channel bandwidth is used *solely and exclusively* for AMTS and maritime services and not for land mobile or other services.

C. All Phase II Licensees in the 218-220 MHz Band Should Provide Adequate Interference Protection to Incumbents.

Whenever the Commission has conducted auctions for unlicensed white space, it has taken pains to ensure that auction winners protect incumbent licensees in the licensed spectrum

¹⁷ For example, the Commission has focused on the efficiency of narrowband technology in its refarming proceedings for Private Land Mobile Radio Services. In those proceedings, the Commission required licensees in the 150-174 MHz, 421-430 MHz, 450-470 MHz, and 470-512 MHz band to operate on channel bandwidths of 6.25 kHz and 12.5 kHz or less. See e.g., Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them; and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, Second Report and Order, PR Docket No. 92-235 (Released March 12, 1997). While these proceedings are not directly applicable to the 218-220 MHz band, they are nonetheless demonstrative of the Commission's concerted effort to reduce channel bandwidth to allow for more spectrally efficient technology. In its comments, Data Flow Systems, Inc. ("Data Flow") also acknowledged the greater efficiencies inherent in narrowband technology, noting that a reduction in frequency spacing from 25 kHz to 6.25 kHz would provide a 360 channel (or 300%) increase in the number of channels available in the 217-220 MHz band. Comments of Data Flow Systems, Inc., WT Docket No. 02-8 at p. 4 (filed March 4, 2002). Securicor's proposal to reduce the channel spacing to 5 kHz would increase these efficiencies even further.

at issue. SMR Advisory and BIZCOM approve and agree with this approach. As it has done in other services, however, the Commission should act to ensure that the rights of incumbents are limited and defined by the currently authorized rights under their site-by-site licenses. Incumbents should *not* be allowed to expand their existing areas into the newly auctioned areas. Incumbent service providers have had sufficient time and opportunity to expand their licenses on a site-by-site basis. Therefore, if incumbents in the 218-220 MHz band had plans to expand, they should have done so prior to the auction.

Furthermore, as it has done in other services,¹⁸ the Commission should adopt rules providing that any incumbents' forfeited site-by-site licenses are inherited and available to the auction winner in that specific geographic area.

D. The Wholesale Reallocation of the 216-220 MHz Band To "Advanced Technologies" Is Not Feasible.

SMR Advisory and BIZCOM believe that the Commission should dismiss Warren Haven's proposal as overly broad and not feasible. While SMR Advisory and BIZCOM support flexible use of the 218-220 MHz band as evidenced by their comments here, Haven's proposal to introduce a new "Advanced Technologies 220 MHz Service" in the 218-220 MHz band. Havens' entire proposal is based on the presumption that the primary services in the 218-220 MHz band are "lightly used;"¹⁹ to the contrary, however, as discussed by the Commission, there is a significant incumbent presence in this band. Unlike Securicor's proposal, Havens' proposal failed to mention how his service would increase spectrum efficiency in the 218-220 MHz band.

¹⁸ See supra note 13, 220 MHz Third Report and Order at p. 41 (clarifying that as "similarly provided in the *800 MHz SMR Report and Order* with regard to the channels of incumbent 800 MHz SMR licensees -- if any channels of a Phase I licensee authorized in a particular EA or Region are recovered by the Commission, such channels will automatically revert to the EA or Regional licensee authorized on the channels in that EA or Region").

Furthermore, Havens' proposal did not account for protection of incumbent licensees in the 218-220 MHz band.

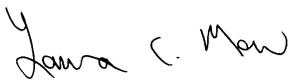
III.

CONCLUSION

Accordingly, based on the foregoing, SMR Advisory and BIZCOM urge the Commission to adopt service rules in the 218-220 MHz band consistent with their comments herein.

Respectfully Submitted,

**SMR ADVISORY GROUP, LC
BIZCOM USA, INC.**

By: 

Laura C. Mow
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900, East Tower
Washington, D.C. 20005

March 18, 2002

Their Counsel

DC01/374938.2

¹⁹ Comments of Warren C. Havens, ET Docket No. 00-221 at p. 3 (Filed March 7, 2001).