

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

**In the Matter of:** )  
 )  
**2002 Biennial Review of** ) **WT Docket No. 02-310**  
**Telecommunications** )  
**Regulations Within the Purview of the** )  
**Wireless Telecommunications Bureau** )

**To: The Commission**

**COMMENTS**

Westel Communications, Inc. ("Westel"), by its attorneys and pursuant to *Public Notice*, "The Commission Seeks Public Comment in the 2002 Biennial Review of Telecommunications Regulations Within the Purview of the Wireless Telecommunications Bureau," FCC 02-264, released on September 26, 2002, hereby submits its Comments. The Commission has asked for suggestions on the elimination of rules that might enable the Commission to operate more efficiently and effectively.

**INTRODUCTION**

Westel operates in the 470-512 MHz band for trunked mobile operation in Houston, Texas. Westel has held its license in this band for approximately twenty years. It operates its facilities under **Part 22** of the Commission's Rules and Regulations and specifically, under FCC Rule §§22.651 through 22.659.

### Westel's Request

Westel requests that the Commission review and eliminate §22.655, Channel Usage. This rule section provides that 470-512 MHz band licensees measure channel usage at least once every three months. This rule section incorporated and presently maintains what was the Part 22 traditional “traffic loading studies.” Although the rule was applicable prior to the Commission’s designation of the 470-512 MHz band from trunked mobile operation to point-to-multipoint operation in 1994, the channel usage reporting was retained in the 470-512 rules under the premise that the demand for trunked mobile service would decrease and would make the channels available to point-to-point operation.<sup>1</sup> However, the channels are still being used for trunked mobile service.

Basing its decision on earlier proceedings which called for market forces to determine which services are offered on two-way mobile channels,<sup>2</sup> the Commission eliminated traffic loading studies for the other Part 22 services in 1994.<sup>3</sup> Although, the Commission eliminated the traffic loading studies in connection with the applications for additional channels, the rationale for the elimination of loading studies applies to the instant case. In 1994, the Commission found that such studies are often “of questionable reliability and are burdensome for both licensees and the Commission’s staff.”<sup>4</sup> Westel

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<sup>1</sup> *Report and Order*, Revision of Part 22 of the Commission’s Rules Governing the Public Mobile Services, CC Docket No. 92-115, 9 FCC Rcd 6513, 6567 (1994)(“*Report and Order*”)

<sup>2</sup> *See, e.g., First Report and Order*, Flexible Allocation of Frequencies in the Domestic Public Land Mobile Service for Paging and other Services, 4 FCC Rcd 1576 (1989).

<sup>3</sup> *Report and Order*, 6523-6524.

<sup>4</sup> *Supra* at 6523.

concur with the Commission and asserts that the quarterly reporting of this traffic is unquestionably burdensome for the licensees and the Commission's staff.

Further, since 1994, the Commission has provided for additional spectrum for point-to-multipoint operations, in particular through Auction 42, held on November 14, 2001. Thus, it would appear that the demand for point-to-multipoint operations has been diminished, to a great extent. Westel asserts that the measurement of channel usage at least once every three months is burdensome and is unnecessary in view of the additional capacity.

The Commission's Rules presently state that if channels are not used by licensed carriers to provide service, they automatically expire after three months without service provision. Furthermore, the Commission requires that the licensees notify the Commission of such non-use by cancellation.<sup>5</sup> This "honor system" procedure applies to all Part 22 licensees, except for 470-512 MHz licensees who, in addition, have to submit traffic reports to proactively show usage on their systems. Westel submits that 470-512 MHz licensees should be treated equally with other Part 22 licensees.<sup>6</sup> The traffic loading studies for 470-512 licensees should be eliminated.

Pursuant to 47 U.S.C. §161, the Commission is required to review biennially its regulations. It is directed to repeal any such regulations that it finds are no longer in the public interest. It is submitted that the referenced traffic loading studies are not in the public interest since they are ineffective and burdensome on both the carriers and the

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<sup>5</sup> See §22.317.

<sup>6</sup> See *Melody Music, Inc. v. FCC*, 345 F.2d, 730, 733 (D.C. Cir. 1965).

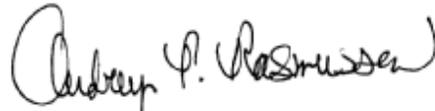
Commission staff. On this basis, Westel urges the Commission to eliminate §22.655 of its Part 22 Rules.

**CONCLUSION**

Westel requests that the Commission include its suggestion in its biennial review on the basis that Section 22.655 of the Commission's Rules is burdensome and unnecessary and therefore the Commission should repeal it.

Respectfully submitted,

**WESTEL COMMUNICATIONS, INC.**



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