

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

**Commission Seeks Comment on Spectrum
Policy Task Force Report**)

ET Docket No. 02-135

*FCC Public Notice (FCC 02-322), released
November 25, 2002.*)

To: The Commission

REPLY COMMENTS OF THE BLOOSTON PRIVATE USERS

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, on behalf of its clients listed in Attachment A hereto (the “Private Users”), hereby submits these reply comments in the above captioned proceeding concerning the Commission’s Spectrum Policy Task Force Report (the “Task Force Report” or “Report”). In general, the Private Users support the Task Force recommendations with respect to creating incentives for efficient use of spectrum, grouping of spectrum “neighbors” with technically compatible characteristics, and the need for clear definitions of the rights and responsibilities of both licensed and unlicensed spectrum users. The Private Users also agree that no single regulatory model should be applied to all spectrum. However, the Private Users’ greatest concern is that any new spectrum policies recognize the substantial efficiencies already achieved by millions of private radio operations within the relatively small allocation of spectrum set forth in Part 90 of the Commission’s Rules.

I. The Task Force Report Fails to Adequately Recognize the Significance of Private Land Mobile Radio Operations.

Each of the Private Users is licensed by the Commission for Private Land Mobile Radio Services (PLMRS) under Rule Part 90, using their channels for private, internal communications that are vital to conducting their business and ensuring the safety of employees, customers and the public. It is noteworthy that there is almost no mention of PLMRS operations in Task Force Report, and certainly no detailed analysis of how the Task Force policy recommendations would effect the PLMRS. The Private Users urge the Commission not to let this apparent lack of attention to private radio issues to translate into spectrum policies that disfavor the very effective licensing and regulatory scheme already in use for PLMRS. As LMCC notes in its Comments (at p. 1), “government and commercial users are *not* the only users of the spectrum. Indeed, private wireless licensees are the largest constituency group served by the Commission.”

LMCC also correctly observes as follows:

Private wireless communications systems have a profound effect on the daily lives of all Americans. . . Utilizing their own internal private wireless systems allows industry to increase efficiency, productivity and safety, thereby contributing to the benefit of the national economy and effectively competing in the global marketplace.

LMCC Comments at p. 2.

II. PLMR Systems Already Utilize Spectrum Efficiently

The Private Users support PCIA’s Comments (at pp. 2-3), wherein PCIA observes that the system of private frequency coordination has worked well, and the PLMR frequencies are used intensively and efficiently by a wide variety of private entities, many of whom are small businesses.

The universe of “private users” licensed under Part 90 is made up of a wide range of entities, ranging from large manufacturers to automobile clubs to small landscaping businesses. All of these varied entities have special operational needs that often cannot be met effectively by commercial providers. These special considerations include the need for, *e.g.*, instantaneous communications, unique coverage areas, priority access in times of emergencies, increased security and reliability of communications, usage patterns that can overwhelm commercial systems. See Land Mobile Communications Council (LMCC) Comments at p. 2. Through the use of the frequency coordination system, the Commission has been able to license literally millions of transmitters to operate on the relatively thin slices of spectrum that make up the PLMRS allocation. In some cases, this is accomplished by having compatible users share channels. In other cases, it is accomplished by having exclusive users take engineering and operational measures to avoid harmful interference. While most of these operations would fall under the “command and control” model discussed in the Report, the Commission should recognize that efficient use of the spectrum is achieved nonetheless.

In this regard, the Private Users support the Task Force recommendation that public safety communications should remain subject to command-and-control regulation. APCO Comments at p.2. Because many internal use PLMR systems perform safety-related functions similar to those performed by public safety radio systems, and the current PLMRS licensing system achieves spectrum use efficiency as discussed above, the FCC should retain command-and-control regulation for the PLMR services.

In particular, the comments in this proceeding show that private industry uses PLMR systems to facilitate safety-related communications and support critical internal

operations. Boeing Comments at p. 6; LMCC Comments at p. 2. The Private Users therefore believe the same factors that led the Task Force to recommend the retention of a command-and-control licensing and regulatory model for the public safety services – *i.e.*, the need to preserve reliable, immediate, and unfettered access to radio communications on an around-the-clock basis – should lead the Commission to retain a command-and-control model for the PLMRS spectrum in general.

While the Task Force Report discusses (at pp. 19-21) the concept of moving toward a recognition of the “time dimension” of spectrum use, efficiency in PLMRS is achieved by the sharing of a small amount of spectrum for multiple important uses. The Commission has already recognized this fact, in rejecting the imposition of spectrum auctions on the PLMRS spectrum. *See Report and Order and Further Notice of Proposed Rulemaking*, WT Docket 99-87, FCC 00-403, released November 20, 2000, at para. 96. The Commission should continue to recognize that the public interest is best served by retaining the current system of licensing shared PLMRS users, rather than attempting to impose licensing schemes that are better suited to commercial operations. *See id.*

III. The Commission Should Not Apply the Concepts of “Underlay” Licensing and “Opportunistic Easements” to the PLMRS Bands

There is a suggestion by certain commenters that the spectrum policy of the FCC should reflect a preference for the “commons” model of spectrum use, rather than the traditional command-and-control licensing and regulatory scheme. The commons approach, which would allow potential users to access spectrum without any FCC licensing, is favored by certain manufacturers of wireless local area networking

equipment. *See e.g.*, Proxim Comments at p. 5. The Private Users do not oppose this approach for new spectrum allocations, or perhaps future reallocations of Government spectrum. However, the commons approach is incompatible with the specialized nature of private radio systems. Private users need the certainty of licensed spectrum, and the ability to identify all authorized users in the event of interference. Command and control must be maintained because current users have made significant investments in their internal communications systems, and this investment would be jeopardized if the Commission abandons its current rules.

The Private Users strongly oppose any concept of allowing unlicensed low-power “underlay” users to operate on the licensed Part 90 spectrum. Even when the spectrum is limited to licensees only, it can be difficult to determine the identity and location of an interfering operation. Indeed, in many cases of interference due to frequency “drift” or other problems, it has taken weeks and sometimes months to identify the source and secure Commission action to stop the interference. If a person is able to purchase a radio off the shelf and simply operate in the Part 90 band, it will prove impossible to locate and eliminate interference from such underlay users, even if they would have secondary status. This would create the possibility that important communications by licensed users will be unacceptably blocked.

The Private Users object even more strongly to the concept of allowing unlicensed *high-power* “opportunistic” users on the Part 90 spectrum. Given the number of licensed users already occupying the PLMRS spectrum, there is no room for such unlicensed users. The potential interference and enforcement problems discussed above would only be magnified at higher power levels.

IV. Imposition of Receiver Performance Standards is Not Appropriate for PLMRS.

The Task Force Report poses the question of whether the Commission should impose minimum receive antenna performance requirements, as a way to further avoid interference. With regard to the PLMRS spectrum, this measure is not yet warranted, and would be disruptive if applied retroactively. There are too many users that would have to incur too great an expense to achieve retroactive compliance. Moreover, there would be relatively little further efficiency to be gained, because the shared use PLMRS spectrum is already used efficiently and intensively. Therefore, the Private Users agree with the Task Force and certain commenters that any receiver performance standards should be voluntary, rather than mandatory. Report at 31, 34, 65; Proxim Comments at pp.5-6;

V. The FCC Should Proceed Cautiously With Regard to the Task Force’s “Interference Temperature” Concept

The Task Force proposal to establish an “interference temperature” standard for the purpose of defining “harmful interference” is an interesting idea, in concept. However, the Private Users must join TIA and others in questioning whether an “interference temperature” measure is currently appropriate or practical. Use of a noise temperature cap to permit spectrum sharing would be extremely difficult to implement. TIA Comments at pp. 8-9. “If aggregate users cause the noise in a given band to exceed the cap, who among the multiple (underlay) users would be forced to abandon use of the spectrum?” *Id.* at 9. Moreover, as discussed above, the concept of underlay licensing should not be applied to PLMRS spectrum, making the interference temperature concept less relevant to the Part 90 spectrum.

While the Private Users support further analysis and study of the “interference temperature” concept, they agree with Motorola that this concept is “far from being ready for routine deployment in the real world as a reliable spectrum management tool.” Motorola Comments at p. 14.

VI. CONCLUSION

The Private Users respectfully request that the Commission take the above concerns into consideration in adopting its spectrum management policies or in fashioning any rule proposals based on the findings of the Spectrum Policy Task Force.

Respectfully Submitted,

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The businesses that are participating in these Reply Comments (the “Private Users”) include the following:

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- AAA Auto Club South, Inc.
- AAA New Mexico, Inc.
- AAA North Jersey
- AAA Texas, L.L.C.
- Automobile Club of Southern California
- California State Automobile Association
- Mobile Communications Service of Miami, Inc.
- Williams Brothers Construction Co., Inc.
- Yellow Transportation, L.L.C.

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