

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

In the Matter of)	
)	
Amendment of Part 22 of the Commission’s Rules To Benefit the Consumers of Air-Ground Telecommunications Services)	WT Docket No. 03-103
)	
Biennial Regulatory Review – Amendment of Parts 1, 22 and 90 of the Commission’s Rules)	

REPLY COMMENTS OF TEXAS LICENSE CONSULTANTS

Texas License Consultants (“TLC”), by its attorneys and pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”) and the invitation extended by the FCC in the *Notice of Proposed Rulemaking* (“NPRM”) in the above-referenced proceeding, hereby submits its reply comments responsive to the initial comments submitted by other parties regarding the FCC’s proposal to modify certain rules that govern spectrum designated for use in the public land mobile service (“PLMS”).^{1/} In particular, TLC submits these comments to support the proposal of the American Mobile Telecommunications Association, Inc. (“AMTA”) that the FCC reexamine the channel allocation in the band 454/459 MHz for the general aviation air-ground service (“General Aviation AGS”).^{2/}

^{1/} *Amendment of Part 22 of the Commission’s Rules to Benefit the Consumers of Air-Ground Telecommunications Services Biennial Regulatory Review - Amendment of Parts 1, 22 and 90 of the Commission’s Rules, Notice of Proposed Rule Making*, FCC Docket No. 03-103, 18 FCC Rcd. 8380 (Released April 28, 2003) (“NPRM”).

^{2/} Comments of the American Mobile Telecommunications Association, Inc., p. 5-6 (“AMTA Comments”).

I. Introduction

TLC is a provider of communications equipment and services in the Houston, Texas area. TLC's principal has been involved in the two-way radio business for over 20 years in a variety of capacities, including as an owner of 800 MHz specialized mobile radio ("SMR") systems. TLC's principal was the successful high bidder in Auctions 40 and 48, which auctioned spectrum formerly licensed for paging operations. The paging spectrum acquired in these two auctions will be used to provide two-way radio services in Houston and surrounding areas.^{3/} TLC submitted initial comments in this proceeding jointly with other high bidders that participated in Auctions 40 and/or 48. TLC's initial comments urged the Commission to eliminate certain restrictions on the operation of frequencies designated for PLMS operations.

As a provider of two-way radio services in Texas, TLC is interested in many of the issues raised by the NPRM and discussed in the initial comments of others. One of those issues is the potential availability of General Aviation AGS channels for other purposes. As the Commission is aware, the spectrum available for the General Aviation AGS is immediately adjacent to spectrum recently made available for use in Auctions 40 and 48. By combining the Auction 40/48 spectrum with channels from the General Aviation AGS, TLC and others could provide a more robust terrestrial based communications service in the 454/459 MHz bands. Because this possibility was raised in AMTA's initial comments, TLC is pleased to have this opportunity to submit these Reply Comments in order to address that issue.

^{3/} *Lower and Upper Paging Bands Auction Closes, Winning Bidders Announced*, Report No. AUC-01-40-N (Auction No. 40), Public Notice, DA 01-2858, Attachment A at 4 (Dec. 11, 2001). *Lower and Upper Paging Bands Auction Closes, Winning Bidders Announced*, Report No. AUC-03-48-E (Auction No. 48), Public Notice, DA 03-1836, Attachment A at 3 (May 30, 2003).

II. Discussion

The NPRM discusses the current availability of spectrum for air-ground operations and how the nation's air-ground needs may be addressed by that spectrum as well as frequencies on which air-ground operations are not permitted today. Based on that discussion, it is evident that air-ground communications requirements may be more effectively satisfied using spectrum other than in the 454/459 MHz band, and that the FCC should re-allocate that spectrum for terrestrial two-way communications services.

A. Other Services are Suitable to Offer the Same Service and More

There is no need to have spectrum dedicated exclusively for general aviation purposes. The General Aviation AGS spectrum allocation is narrowly tailored to fit a particular need that can, instead, be satisfied by providers of services in other spectrum bands. One of the primary purposes of the NPRM is to examine whether cellular spectrum may be used to provide air-ground services. If the FCC permits cellular service providers to offer service on board aircraft, the current needs served by General Aviation AGS spectrum could be satisfied by cellular carriers. In fact, as the FCC noted in the NPRM, AirCell, Inc., already provides service to general aviation aircraft using traditional cellular networks and frequencies.^{4/} In granting AirCell's waiver request, the FCC reasoned that AirCell was better equipped to provide communications services between pilots and ground personnel while increasing the safety of air transportation.^{5/} Grant of AirCell's waiver request illustrates that there is other spectrum suitable

^{4/} NPRM at ¶ 15.

^{5/} *AirCell, Inc. Petition, Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or in the Alternative, for a Declaratory Ruling*, Order, 14 FCC Rcd 806 (1998) ("AirCell Petition").

for providing General Aviation AGS and that the thirteen 454/459 MHz channel pairs designated for the service could be used more efficiently by other services.

Moreover, the NPRM also notes that the air-ground spectrum allocated for commercial operations in the 800 MHz band is underused today.^{6/} If the FCC amends its regulations to eliminate regulatory restrictions on 800 MHz air-ground spectrum, general aviation (as well as commercial aviation) communications requirements could easily be met in these bands.

B. The FCC Has Already Allowed Terrestrial Operations in the 454/459 MHz Band

Re-allocation of the general aviation allocation at 454/459 MHz is consistent with recent Commission action. The FCC granted Metro Telecom a waiver of Section 22.805 of its rules to provide private land mobile radio service on frequencies offset from those allotted to General Aviation Air-Ground Service.^{7/} Metro Telecom demonstrated in its waiver request that it would not cause harmful interference to existing general aviation channel users. The FCC conditioned grant of the waiver on Metro Telecom's protection of existing air-ground systems from harmful interference. The FCC reasoned that granting the waiver served the public interest because it facilitated the "effective and efficient utilization of the spectrum."^{8/} Although the FCC placed limitations and conditions on Metro Telecom's use of the General Aviation AGS spectrum, its grant of the waiver illustrates that the Commission recognizes that the 454/459 MHz band may be more efficiently used in ways not currently permitted in the rules.

^{6/} NPRM at ¶¶ 17-18.

^{7/} *Metro Telecom, Inc., Request for Waiver of Section 22.805 of the Commission's Rules to Operate Private Land Mobile Radio Systems in the New York Metropolitan Area on Frequencies Offset from Airborne Mobile Frequencies Allocated to the Air Ground Radiotelephone Service, Order*, DA 03-2380, released July 22, 2003 ("Metro Telecom Waiver").

^{8/} Metro Telecom Waiver at ¶ 10.

C. Converting Use of Channels Consistent with Recent Efforts By the FCC

Over the past several years, the FCC has undertaken to increase the efficient use of spectrum. From making more spectrum available for unlicensed use to allowing spectrum leasing,^{9/} the FCC has re-evaluated spectrum utilization in order to encourage more service providers and new technologies. In November 2002, the Spectrum Policy Task Force issued its report assessing the FCC's spectrum management policies and addressing ways in which it could be improved.^{10/} One of the Task Force's recommendations was to conduct periodic reviews of technical parameters in light of evolving technologies and uses.^{11/} Consistent with the Spectrum Policy Task Force's approach, the Commission should evaluate utilization of the General Aviation AGS spectrum. In its Biennial Regulatory Review, the Wireless Bureau recommended that the FCC initiate just such a proceeding to determine if the rules should be modified or eliminated. It also stated that certain modifications might be in the public interest.^{12/} TLC agrees that the time is ripe for such review and modification to the General Aviation AGS.

^{9/} *In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket 00-230, FCC 03-113 (released Oct. 6, 2003).

^{10/} *Spectrum Policy Task Force Report*, ET Docket 02-135 (released Nov. 2002) ("Task Force Report").

^{11/} *Id.*

^{12/} 2002 Biennial Review at p. 49.

D. General Aviation AGS is Not the Best Use of the 454/459 MHz Spectrum

As AMTA stated, and TLC supports, the FCC should consider whether the allocation of the thirteen frequency pairs in the 454/459 MHz band for General Aviation AGS is the best use of the spectrum.

General Aviation AGS is employed on an inefficient basis today, based on, among other metrics, applicable co-channel separation requirements. Section 22.813(a) of the Commission's rules requires a separation of 497 miles between co-channel licensees in the General Aviation AGS. In contrast, land mobile radio service providers in the 450 MHz band are limited to a 50-mile co-channel separation distance. Although the purpose of the 497-mile distance separation is to protect other users in the same service, it is evident that the spectrum could be used more efficiently by other services (particularly in light of the ability of general aviation requirements to be met in other bands). Accordingly, as AMTA recommends, existing air-ground operations in the 454/459 MHz band should be shifted to other services, and the spectrum should be made available through the competitive bidding process for other purposes.

If, as TLC recommends, the 454/459 MHz air-ground spectrum is re-allocated for terrestrial operations, existing licensees could be permitted to continue operations for a period of time. Even during that "grandfather" period, more intense use of the 454/459 MHz band is possible. For example, prospective providers of terrestrial services could, through frequency coordination or engineering demonstrations, use the spectrum where it was not being employed for air-ground operations. Moreover, some cities do not have the same concentration of airports, as is the case in, for example, the New York metropolitan region and the Washington, D.C./Baltimore area. In the cities with a lesser concentration of airports, all thirteen General Aviation AGS channel pairs could potentially be available immediately for terrestrial operations.

III. Conclusion

Texas License Consultants hereby submits the foregoing reply comments and urges the Commission to act in a manner consistent with the recommendations made herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Stefani Watterson, do hereby certify that on this 23rd day of October, the foregoing

Reply Comments were served on the following by first class.

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