

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

In the Matter of)
)
Promoting Efficient Use of Spectrum) WT Docket No. 00-230
Through Elimination of Barriers to the)
Development of Secondary Markets)

To: The Commission

**COMMENTS OF
MOBEX COMMUNICATIONS, INC.**

Mobex Communications, Inc. (“Mobex”) hereby submits the following comments in response to the Commission’s *Report and Order and Further Notice of Proposed Rulemaking*, FCC 03-113 (released October 6, 2003) (“*Report and Order*”), in the above-captioned proceeding. Mobex congratulates the Commission on the wisdom of its secondary markets policy, and urges the Commission to apply the new spectrum leasing rules to Part 80, Automated Maritime Telecommunications Services (“AMTS”).

Mobex is the nation’s largest licensee of AMTS channels, providing a wide variety of commercial mobile radio services to both maritime and land-based customers. Mobex operates AMTS systems along most of the nation’s major inland waterways and major portions of the Atlantic, Gulf of Mexico, and Pacific coasts. While AMTS was initially intended as an interconnected telecommunications service for vessels on waterways, the FCC has defined AMTS as a commercial mobile radio service (CMRS),¹ provided AMTS licensees with broad flexibility regarding operations and services

¹ Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Report and Order and Further Notice of Proposed Rulemaking*, PR Docket 92-257, 12 FCC Rcd 16949, 17011 (1997).

(including provision of land-based services),² and adopted geographic licensing with future licenses to be issued via spectrum auction.³

The Commission's *Report and Order* in this proceeding established new spectrum leasing policies for a variety of radio services. Previously, secondary markets for radio spectrum were severely limited by the outmoded *de facto* control requirements set forth in *Intermountain Microwave*, 12 FCC 2d 559, 560 (1963). Licensees could lease spectrum only if they maintained *de facto* control of its use. For example, lessors were required to retain and manage staff responsible for providing the communications services to the lessee, and to take sole responsibility for compliance with Commission rules. The new standard permits licensees and spectrum lessees to transfer such *de facto* control through a spectrum lease, subject to a streamlined Commission approval process.

The Commission delineated a wide range of radio services subject to the new spectrum leasing policy. AMTS was not included, but only because the Notice of Proposed Rulemaking leading to the *Report and Order* had generally excluded Part 80 maritime services.⁴ VHF Public Coast channels were added at the last moment, providing the Commission with a precedent to include other similar Part 80 services at this time. Indeed, the "*Further Notice of Proposed Rulemaking*" portion of the *Report and Order*, seeks comments on applying the new spectrum lease policies to AMTS and certain other services.⁵

² Amendment of the Commission's Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rulemaking*, PR Docket 92-257, 15 FCC Rcd 22585 (2000).

³ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket 92-257, 17 FCC Rcd 6685 (2002).

⁴ *Report and Order*, at ¶189 and n.495

⁵ *Report and Order*, at n.495.

The Commission appears to have three basic criteria for determining which services should be subject to the new secondary markets policies: (1) licenses are issued on a geographic area basis, (2) flexible licensing, and (3) exclusive use. These are the criteria identified by the Commission when it added VHF Public Coast Stations to services covered by the new spectrum leasing policy. The Commission noted that “unlike other Part 80 Maritime services, these VHF Public Coast Station licenses were awarded pursuant to auction and involve a geographic area, flexible, and exclusive use licensing scheme similar to that of many of the other services affected by this proceeding.”⁶ However, the reality is that at least one other Part 80 Maritime Service, AMTS, also shares those characteristics.

In 2002, the Commission adopted new licensing rules for AMTS to provide for geographic area licenses to be issued by auction.⁷ The Commission has also given AMTS licensees wide technical and operational flexibility.⁸ While AMTS may have once been primarily a maritime service, like VHF Public Coast stations, it has evolved into a radio service that can adapt to the marketplace and serve a variety of customers and needs. Finally, AMTS licenses are granted on an exclusive basis, with interference protection criteria for co-channel licenses.

⁶ *Report and Order* at n.182.

⁷ Amendment of the Commission’s Rules Concerning Maritime Communications, *Second Memorandum Opinion and Order and Fifth Report and Order*, PR Docket No. 92-257, 17 FCC Rcd 6685 (2002). The Commission recently resolved outstanding petitions for reconsideration. *See* Amendment of the Commission’s Rules Concerning Maritime Communications *Third Memorandum Opinion and Order*, FCC 03-270 (released November 18, 2003).

⁸ Amendment of the Commission’s Rules Concerning Maritime Communications, *Fourth Report and Order and Third Further Notice of Proposed Rulemaking*, PR Docket 92-257, 15 FCC Rcd 22585 (2000).

Therefore, the new spectrum leasing policy should apply to AMTS, both for incumbent AMTS licensees, and for geographic licensees. The Commission made clear in the *Report and Order*, at ¶84 (footnotes omitted), that

in services where we have adopted licensing with a geographic service area overlay protecting incumbent Wireless Radio Service licensees, the remaining incumbents will also be permitted to engage in leasing. We see no basis for treating such incumbents and the geographic area overlay licensees differently for purposes of our leasing policies.

Applying the new spectrum leasing policies to incumbent and geographic area AMTS licensees will serve the public interest. The Commission has elsewhere indicated that “giving licensees more flexibility in the use of maritime spectrum, while preserving the core purpose of this internationally allocated radio service, i.e., to promote safety of life and property at sea, serves the public interest.”⁹ The Commission has also implemented rules to “(1) provide opportunities for continued development of competitive new services using maritime spectrum, (2) expedite market entry through streamlined licensing procedures, (3) promote technological innovation, and (4) eliminate unnecessary regulatory burdens.”¹⁰ Allowing AMTS licensees to lease spectrum capacity through the new streamlined policies will promote these same goals.

The Commission has also often reiterated the need for “regulatory symmetry among maritime CMRS providers and between maritime CMRS providers and other CMRS providers to ensure that market forces, rather than regulatory forces, shape the

⁹ *Id.* at ¶1.

¹⁰ *Id.* at ¶3.

development of the CMRS marketplace.”¹¹ The Commission has applied the new spectrum leasing rules to other CMRS providers, including the maritime VHF Public Coast service. “Regulatory symmetry” requires similar application of the new policies to AMTS.

CONCLUSION

Therefore, for the reasons set forth above, Mobex urges the Commission to apply its new spectrum leasing policies to the automated maritime telecommunication service.

Respectfully submitted,

MOBEX COMMUNICATIONS, INC.

By: /s/
Robert M. Gurs
Fletcher, Heald & Hildreth, PLC
1300 North 17th Street
11th Floor
Arlington, VA 22209
(703) 812-0468

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¹¹ *Id.*