



PUBLIC NOTICE

Federal Communications Commission
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DA 09-678

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**COMMENT CYCLE ESTABLISHED FOR JOINT REQUEST BY STRATOPHONE, LLC
AND SKYTEL SPECTRUM, LLC FOR WAIVER OF CERTAIN AIR-TO-GROUND
RADIOTELEPHONE AUTOMATED SERVICE LICENSING RULES
FOR GENERAL (PRIVATE/NON-COMMERCIAL) AVIATION**

WT Docket No. 09-44

Comment Date: April 27, 2009

Reply Comment Date: May 12, 2009

By this Public Notice, the Mobility Division of the Wireless Telecommunications Bureau (“Bureau”) seeks comment on a request for waiver, jointly filed by Stratophone, LLC (“Stratophone”) and SkyTel Spectrum, LLC (“SkyTel,” and collectively with Stratophone, “Petitioners”), of sections 22.815 and 22.817 of the Commission’s rules.¹ Specifically, Petitioners request that the Commission waive the provisions of section 22.817 that bar a carrier from (a) applying for more than one ground station communication channel at a time for a particular service area, and (b) holding more than six authorizations for ground station communication channels in the same service area.² Further, Petitioners request that the Commission waive the 12-month construction period requirement under section 22.815³ and allow, in connection with the waiver of section 22.817, an extended build-out period of 24 months.⁴

Stratophone currently operates 9 Air-to-Ground Radiotelephone Automated Service (“AGRAS”) communications sites, with a total of 15 channels, primarily in the eastern United States.⁵ SkyTel has

¹ See Waiver Request of Stratophone, LLC and SkyTel Spectrum, LLC, filed Feb. 24, 2009 (“Petition”); 47 C.F.R. §§ 22.815, 22.817.

² Under section 22.817, “a carrier must apply for one ground station communication channel, receive the authorization, construct that station, and notify the FCC of commencement of service before applying for an additional ground station communication channel in that area.” 47 C.F.R. § 22.817. The limit of 6 channels per service area is set forth at 47 C.F.R. § 22.817(f).

³ 47 C.F.R. § 22.815.

⁴ Petitioners seek confirmation that, in the event the Commission grants the requested Waiver, section 22.817(e) (dismissal of premature applications for additional channels) and section 22.817(f) (dismissal of applications for a seventh channel) would be inapplicable to Petitioners’ multi-channel applications. Petition at 9.

⁵ Petition at 1.

been involved with AGRAS communications systems since the early 1990's throughout the country,⁶ and currently operates 45 authorized AGRAS sites, with a total of 71 channels, under a spectrum manager lease agreement with Bell Industries, Inc.⁷ Petitioners state that even though the non-commercial aviation transportation industry is growing,⁸ a number of factors – current regulatory restrictions, limited capacity, lack of call handoff, unavailability of equipment, and high operating costs – have collectively caused the AGRAS system to stagnate.⁹ Stratophone and SkyTel intend to combine their existing operations¹⁰ and propose to develop a modern, digital, nationwide AGRAS network in which they would hold up to 12 AGRAS channels at current and future sites, taking into account the need to protect third-party AGRAS stations from interference pursuant to Commission rules.¹¹

Petitioners state that waiver of sections 22.815 and 22.817 of the rules is critical to deployment of an upgraded, cost-efficient, and economically viable network to serve a thriving non-commercial aviation transportation industry.¹² Petitioners argue that the current application process is unduly slow and costly, and is a serious handicap to the development of a spectrum-efficient and commercially viable AGRAS system.¹³ Rather than having to apply for one channel at a time, construct the authorized channel, and commence service before applying for a second channel at that site,¹⁴ they wish to apply for multiple channels per area in one application cycle and construct a unified, integrated AGRAS network.¹⁵ Further, Petitioners assert that the current six-channel-per-area maximum has restricted carriers' ability to use effectively all the spectrum allocated to AGRAS, and that capacity lies fallow as a result.¹⁶ Waiver of the six-channel limit will, they contend, enable them to utilize all available spectrum at a site more efficiently and intelligently, thereby giving Petitioners the ability to price service more competitively and allow AGRAS to compete with other services.¹⁷ Finally, Petitioners ask for waiver of the 12-month build-out requirement, as multi-channel construction of a new, integrated system will demand additional time.¹⁸

⁶ SkyTel has operated under a variety of ownerships and is currently owned by Velocita Wireless, Inc., which is a subsidiary of United Wireless Holdings, Inc. *See id.*

⁷ The Commission granted its consent to the assignment of these licensees from Bell Industries, Inc. to SkyTel on December 10, 2008. FCC File No. 0003385370. SkyTel indicates it expects to close the transaction in the near future. *See id.* at 1 n.2.

⁸ *See id.* at 2-3.

⁹ *See e.g., id.* at 5.

¹⁰ Petitioners indicate they will seek to obtain any necessary FCC approvals for such combined operations. *Id.* at 6.

¹¹ *See id.* at 6, 9.

¹² *See id.* at 1.

¹³ *See, e.g., id.* at 4.

¹⁴ *See supra* note 2.

¹⁵ *See, e.g.,* Petition at 6-7.

¹⁶ *See id.* at 4, 7-8.

¹⁷ *See, e.g., id.* at 10-11.

¹⁸ *See id.* at 9.

Interested parties may file comments on this Petition on or before **April 27, 2009**. Parties interested in submitting reply comments must do so on or before **May 12, 2009**. All filings concerning matters referenced in this Public Notice should refer to WT Docket 09-44. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS): <http://www.fcc.gov/cgb/ecfs/>, (2) the Federal Government's eRulemaking Portal: <http://www.regulations.gov>, or (3) paper copies.¹⁹

- ECFS Filers: If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full names, U.S. Postal Service mailing addresses, and the applicable docket or rulemaking number. Interested parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.
- eRulemaking Filers: Filers should follow the instructions provided on the website for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

Copies of this Public Notice, and the Stratophone/SkyTel Petition, will be posted on the web at http://gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi and will be available for public inspection and duplication during regular business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Copies of the comments and other filings in this docket also may be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW, Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300 or (800) 378-3160, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an

¹⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This proceeding is designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.²⁰ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.²¹ Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission’s rules.²²

For further information, contact Nina Shafran, Mobility Division, Wireless Telecommunications Bureau, at (202) 418-2781 or via email at Nina.Shafran@fcc.gov.

By the Chief, Mobility Division, Wireless Telecommunications Bureau.

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²⁰ 47 C.F.R. §§ 1.1200(a), 1.1206.

²¹ 47 C.F.R. § 1.1206(b).

²² *Id.*