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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	PR Docket No. 93-144
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR System in the 800 MHz Frequency Band	)	RM-8117, RM-8030, RM-8029

To: The Commission

COMMENTS
OF THE
AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

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July 19, 1993

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SUMMARY

The American Mobile Telecommunications Association, Inc. supports the Commission's proposal to adopt rule facilitating the further development of wide-area SMR systems. The FCC's Notice parallels closely the regulatory structure outlined in the Association's earlier-filed Petition for Rule Making relating to such systems.

Specifically, AMTA concurs with the FCC's recommendations to authorize enhanced mobile service provider ("EMSP") systems in the Major Trading Areas ("MTAs"); to establish a two-stage licensing process with initial eligibility limited to existing SMR operators in each area; to permit EMSP licensees to reuse throughout the MTA all authorized SMR, and possible General Category, frequencies; and to establish stringent application criteria and construction requirements to ensure prompt, appropriately spectrum efficient system implementation by qualified licensees. The Association does recommend certain modifications in the application filing and processing procedures which AMTA believes will further encourage resolution of mutually exclusive situations, consistent with the FCC's objective.

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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.[1] AMTA strongly endorses the Commission's proposal to facilitate implementation of wide-area Specialized Mobile Radio ("SMR") Service systems capable of providing a market-dictated menu of mobile communications services and employing an optimal level of technological advancement. The Association believes that prompt adoption of the regulatory system outlined in the Notice, with the modifications recommended herein, will provide the American public with an additional, and thereby competition-enhancing, cost and spectrum efficient wireless communications option.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interest of the SMR industry. The Association's members include large and small SMR operators throughout the country. Its members collectively represent approximately seventy percent (70%) of the operating SMR systems in the nation. Additionally, all or virtually all granted and pending wide-area SMR waiver requests were filed by members of the Association.[2]

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[1] Notice of Proposed Rulemaking, FCC No. 93-257, PR Docket 93-

2. The instant Notice proposes a fundamental restructuring of the SMR regulatory environment. The modifications included would affect all SMR operators, whether large or small, urban or rural, multi-site or single site. The rules adopted will define the SMR industry into the 21st century. For these reasons, AMTA has a profound interest in the outcome of this proceeding.

II. BACKGROUND

3. Approximately one year ago, AMTA initiated a process within the Association to consider the likely direction of the SMR industry through the rest of this decade, and to identify the regulatory changes needed to effectuate that objective. What began as a "Wish List" of selected items was eventually organized into the Association's "Blueprint for Change" and submitted to the FCC as a Petition for Rule Making.[3]

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[2](...continued)
Call Order") recon. dismissed, 6 FCC Rcd 6989 (1991); In re Request of American Mobile Data Communications, Inc., Memorandum Opinion and Order, 4 FCC Rcd 3802 (1989); Letter from Richard Shiben, Chief, Land Mobile and Microwave Division, Federal Communications Commission, dated April 13, 1992 to George Hertz, Advanced MobileComm of New England, Inc. granting waiver and other relief for the creation of an "Advanced Mobile Radio System" ("MRNE"); See, e.g., Applications and Associated Waiver Requests for Advanced MobileComm Midwest G.P.; Advanced Radio Communication Services of Florida, Inc.; Air Link Communications, Inc.; Cencal, Inc.; Dispatch Communications of Pennsylvania, Inc.; Dispatch Communications of the Mid-Atlantic, Inc.; Industrial Communications and Electronics, Inc.; Johnson Communications Corporation; Transit Communications Atlanta, L.P.; and U.S. Digital, Inc. Because these applications are not formally identified on any FCC-generated Public Notice, AMTA cannot state with certainty that all wide-area waiver applications have been submitted by AMTA members.

[3] AMTA's Petition for Rulemaking, RM-8117, filed October 26, 1992.

4. The effort was undertaken in response to unassailable evidence that a significant segment of the SMR industry wished to develop wide-area, integrated networks employing frequency reuse and typically utilizing some combination of low power/elevation and high power/elevation sites. A substantial number of licenses for such systems had been granted or were pending with the Commission.[4] It was apparent that the confluence of spectrum shortages in urban markets, the incipient availability of more advanced, higher capacity digital equipment, and increased consumer interest in seamless, wireless capability throughout broader areas of commercial interdependence warranted a re-evaluation of the applicable rules.

5. AMTA's Petition focused on development of a regulatory scheme specifically designed to facilitate the licensing and implementation of wide-area SMR systems. It was intended as an addition to, rather than a replacement for, the existing 800 MHz SMR regulatory scheme. This effort to overlay the current rules with provisions uniquely applicable to wide-area SMR licensing was reflective of AMTA's belief that such systems would be an increasingly integral, even dominant, part of the industry, and that the existing policies governing the licensing of such systems were unnecessarily burdensome for both the Commission and the applicants.

6. The instant Notice is responsive to AMTA's Blueprint

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[4] See, footnote 2, supra.

proposal.[5] It incorporates certain recommendations included in the Association's Petition, expands upon or refines others, and generally offers a fully developed regulatory structure for wide-area SMR systems. The overall consistency of AMTA's and the FCC's approaches is evidenced by the articulated objectives upon which each was predicated. AMTA's Blueprint identified the following five factors as critical in evaluating any wide-area SMR proposal:

- The scheme should recognize and facilitate the natural evolution toward wide-area SMR systems, yet retain mechanisms to preserve an adequate level of competition;
- The plan should be inclusive in that it should encourage participation by all interested SMR operators, not only those with the largest number of frequencies in the geographic area defined;
- The system must be relatively easy to administer so that licenses can be issued, systems implemented, and regulatory oversight accomplished without undue delay or difficulty;
- The authorizations granted should permit the licensee sufficient flexibility in system design and frequency plan to promote implementation of advanced technologies; and
- The geographic area covered by a block license should be large enough to accommodate inter-related commercial markets, yet small enough to maintain a healthy level of regional competition.

7. Similarly, the Notice lists the following objectives as necessary ingredients in disposition of the instant proceeding:

- reduce the administrative burdens currently associated with filing and processing 800 MHz wide-area SMR

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[5] The Notice also addresses issues raised in the National

requests;

- o develop flexible policies that will permit the development of such systems throughout the country while permitting the continued viability and growth of non-participating SMR systems;
- o ensure that wide-area licensees make productive, timely use of their spectrum;
- o encourage more efficient use of spectrum, particularly in congested markets and accommodate implementation of advanced technologies; and
- o preserve those factors that have contributed to the current success of the SMR industry. Notice ¶8.

The consistency of objectives between AMTA and the FCC, as well as the specific proposal detailed in the Notice, leave little doubt that the Association and the agency will be able to formulate a regulatory approach satisfactory to both.

III. DISCUSSION

8. There are several regulatory matters which must be resolved in adoption of a wide-area SMR licensing scheme. At a minimum, the rules must specify:

A) the definition of a wide-area authorization including both the market boundary, i.e. the geographic area, and the frequencies to be encompassed within the authorization;

B) the qualifying criteria to apply for such a license, as well as the content of the applications themselves;

C) the system for FCC processing of the applications, including the disposition of mutually exclusive applications; and

D) post-licensing requirements, including system construction, implementation and transfer rules.

AMTA's comments on and recommendations regarding each of these

areas is detailed below.

A. **Wide-Area SMR Authorization Definition**

9. The instant Notice adopts the currently operative definition of a wide-area SMR license as one which enables the licensee to reuse substantial numbers of 800 MHz frequencies at multiple sites throughout a specified geographic area. Most such systems to date have also proposed to implement advanced technologies to improve capacity in spectrum deficient markets. The Commission proposes to establish an Expanded Mobile Service Provider ("EMSP") licensing option pursuant to which these wide-area system would be granted in the future.

10. The FCC proposal for EMSP licensing deviates from the agency's existing wide-area system waiver policy in certain significant respects. First, it would establish specific geographic boundaries for EMSP authorizations rather than allowing each licensee to define its own market area based on the coverage of its existing constructed facilities. It recommends that either the 47 Major Trading Areas ("MTAs") or the 487 Basic Trading Areas ("BTAs") be used to define EMSP market boundaries. Notice ¶11-15. Second, unlike the current policy under which all inter-category channels utilized in the licensee's existing systems may be reused throughout the wide-area authorization, the FCC proposes that only SMR, and possibly General Category, frequencies be available for reuse. Notice ¶25.

11. The Association is persuaded that pre-determined markets

are, on balance, a preferable approach for defining EMSP authorizations. In AMTA's opinion, the current approach has worked well only because of the sporadic timing of waiver application filings. The system is essentially one of first-come, first-served. The first-filed application claiming the use of a particular frequency in an area is granted that right even if a later-filed applicant currently uses the frequency at a site closer to the area of overlap. This approach works as long as two or more applications requesting some common frequencies in some common areas are not filed in a time frame which makes them mutually exclusive.

12. That will not be the case once rules such as those proposed in the Notice have been adopted. The establishment of a date (or window) certain will unquestionably attract mutually exclusive applications. If each is self-defined, the FCC may face an endless daisy chain of narrow areas of mutual exclusivity by individual frequency and individual site. The resources and time required to identify and resolve each such instance have persuaded AMTA that EMSP market boundaries must be established in advance even if this results in more limited applicant flexibility. It will enable the Commission to sort out mutually exclusive situations easily, to grant those applications which do not fall within that category, and to handle the rest in a subsequent process as the agency has in both the cellular and other SMR arenas.

13. The Association believes that the approach will work best

if EMSP authorizations are defined by the 47 MTAs. Having evaluated those market areas in response to the FCC's proposal for 900 MHz wide-area systems,[6] AMTA is persuaded that they conform more closely to existing licensee-defined, wide-area regions than do the suggested alternatives.[7] Each includes at least one metropolitan area of significance, plus the surrounding, typically commercially inter-related communities. Unlike LATAs or the seven regional Bell Operating Company areas, the MTAs are intended to define regions of common economic interest. MTAs are considered superior to BTAs (or an MSA/RSA delineation) because larger areas will reduce the Commission's application processing and related administrative tasks and because they minimize the need for applicants to prepare numerous filings stitching together the preferred areas of coverage. They will enable EMSP licensees to compete effectively with future 900 MHz wide-area SMR systems, consolidated cellular operations, and prospective PCS providers without expending resources on unnecessary transactional costs. All of these factors should work to the benefit of the customers who will be served on these systems.

14. AMTA also supports the FCC's proposal to permit only SMR and already authorized General Category frequencies to be used throughout an EMSP system. The FCC would permit Business and Industrial Land Transportation Pool Frequencies to be used at any

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[6] First Report and Order and Further Notice of Proposed Rule Making, FCC No. 93-34, PR Docket No 89-553, 8 FCC Rcd 1469 (1993).

[7] In fact, they reflect the expanded areas that are already being requested by certain wide-area SMR licensees and applicants.

site at which they are already authorized, but not reused at other sites in the system. Notice ¶32.

15. Inter-category frequencies have been available as a safety value for the expansion of fully loaded, traditional SMR systems when no SMR spectrum is available.[8] They should continue to serve that function. The ability to reuse all authorized SMR and General Category channels anywhere within the EMSP system should allow sufficient flexibility and create sufficient capacity such that Business and Industrial/Land Transportation spectrum can be reserved for use by primary eligibles and by traditional SMR licensees seeking expansion capability. AMTA recommends the inclusion of General Category frequencies in EMSP system configurations because those channels are available to SMR licensees on a primary basis and are already widely used in both traditional and wide-area SMR systems.

B) **EMSP Eligibility Criteria**

16. The Notice proposes a two-stage acceptance and processing approach for EMSP systems. The FCC would initially establish a filing window during which individual or consortium applicants licensed for one or more SMR systems in the MTA as of May 13, 1993 would be permitted to request the use in an EMSP authorization of all frequencies which had been constructed as of the filing date. Grant of the application would permit the licensee to reuse all of its frequencies throughout the MTA. Notice ¶24-26. After the FCC disposes of those applications, it would accept on a first-come,

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[8] 47 C.F.R. §90.621(g).

first-served basis applications for up to 42 unused channels from new entrants and previously granted EMSP licensees which had secured fewer than 42 frequencies.[9] Additionally, an existing EMSP license which had completed system construction would qualify for up to an additional 42 channels. Notice ¶30.

17. The FCC's proposal is similar to the approach outlined in AMTA's Blueprint. The Association had recommended somewhat different licensing schemes in areas of spectrum availability versus spectrum deficiency, but both the agency's and AMTA's proposals would permit existing licensees to file for all of their constructed frequencies, and both would limit to 42 the number of unconstructed frequencies which would be awarded to a licensee.

18. The FCC's decision to treat all markets similarly with respect to eligibility criteria and filing procedures is reasonable in light of its recommendation to adopt the larger MTA boundary definition. AMTA appreciates that the process of determining frequency availability on an area by area basis is a complex one and unnecessary under an MTA approach.

19. The Association also concurs with the FCC's proposal to limit initial eligibility to applicants with constructed, operational facilities in the area. The Commission is correct in its conclusion that the public will be served most expeditiously by first permitting operational licensees to convert existing systems

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[9] The Commission should clarify whether first stage EMSP licensees authorized fewer than 42 channels would be eligible for up to 42 additional unconstructed frequencies during the second stage, or only for the difference between the number authorized and 42.

to wide-area configurations. The precedent established by Fleet Call, whose first wide-area digital system is scheduled to initiate service this summer, evidences the rapidity with which such licensees can be expected to convert to wide-area operation. They have the market and customer expertise, as well as the economic foundation and incentive, to bring service to the public promptly.

20. Additionally, the FCC's co-channel protection criteria, both the existing standard and the approach proposed for EMSP systems, support limiting initial entry to existing licensees. Traditional SMR operators frequently reuse their own frequencies by "short-spacing" themselves to maximize capacity in spectrum deficient markets. It is not uncommon for an entity to reuse frequencies on its own systems or those it manages at distances less than that prescribed by the rules since close spaced co-channel operations can work when coordinated by a single entity. This practice increases spectrum efficiency to the extent efficiency is measured by the amount of traffic handled by a

geographic area. The public would be left with an island of metropolitan coverage surrounded by a non-integrated, possibly incompatible, region of non-urban, wide-ares service. Because that result would not serve the best interests of the subscriber or the service provider, it is clear that the FCC's two stage eligibility approach is appropriate. To the extent that frequencies have not been included in any EMSP system after the first round of applications have been processed, AMTA welcomes the participation of new, competitive entrants, along with the appropriate expansion of existing EMSP licenses as proposed in the Notice.

22. The Association does recommend that the FCC modify two aspects of the application requirements described in the Notice.[10] First, AMTA considers it imperative that applicants file a system

economic limitations, could nonetheless participate in at least the initial stages of the applicant evaluation process. Requiring the FCC to consider, or competing applicants to negotiate with, parties incapable of satisfying the FCC's construction requirements serves no discernible interest. Moreover, it is not clear how the Commission would be able to evaluate the validity of the applicant's implementation plan and related cost estimates required in proposed Rule Section 90.665(e)(5) without the details contained in a site-specific description of the system design. The submission of both of these inter-related exhibits with the initial application will properly ensure that the FCC and other parties are considering only bona fide, fully qualified applicants.

23. Second, the Association requests clarification or modification of the FCC's proposal regarding specification of the minimum number of channels which would be accepted by an EMSP applicant. Notice ¶28 and proposed Rule Section 90.665(e)(7). As discussed in more detail infra, this requirement will serve a purpose only if lottery selectees, other than the first ranked selectee, are awarded only the number of frequencies specified as their minimum. Since the rules appear to contemplate awarding licensees all of their requested frequencies not already assigned to a higher-ranked system, assuming the minimum can be meet, all applicants will set their minimum at the lowest possible number of one or perhaps two to establish trunking capability. This will ensure that their application will be not dismissed without limiting in any meaningful way the number of frequencies for which

they are eligible. Since this cannot be the result intended by the Commission, this application requirement should be clarified or modified.

24. Finally, AMTA endorses the FCC's proposal not to consider loading on an EMSP's traditional SMR systems in determining eligibility, and accepts its decision not to mandate a commitment to implement advanced technologies as a qualifying pre-requisite. There is little doubt that licensees of constructed, operational facilities have every incentive to attract as many customers as possible to use their service. The mix of customer types, as well as communications requirements such as dispatch versus interconnect versus data, is directed most efficiently by the marketplace, not by government regulation. The current SMR loading requirements dictate a preference for dispatch usage which may not always reflect subscriber demands, and unquestionably are set to levels more appropriate for urban than rural communities. AMTA agrees that no superior frequency usage measurement has been proposed for SMR systems, and is increasingly persuaded that today's mature SMR industry no longer needs such a standard. This is particularly true for integrated, wide-area EMSP systems in which networking and seamless coverage using multiple base station sites render existing loading calculations meaningless for their intended purpose.

25. Similarly, AMTA appreciates the difficulty of adopting a spectrum efficiency standard appropriate for all system configurations and geographic areas. However, the Association considers the intention to implement appropriately advanced,

spectrally efficient technology an integral aspect of securing an EMSP authorization. It accepts the FCC's approach not because defining the necessary standard is difficult, but because the Association is confident that EMSP licensees will implement technologies appropriate to the customers they serve and the geographic areas they cover. Like the FCC, AMTA believes that urban spectrum congestion and increasingly sophisticated consumer requirements will dictate the use of advanced, highly efficient equipment employing a variety of innovative technologies in metropolitan areas. Less costly approaches might be employed where capacity is not as significant an issue. Notice ¶38. The consistent, voluntary migration of this industry to improved technologies is clear evidence that marketplace forces make federal regulation unnecessary in this area.

C. **EMSP Application Processing**

26. In its Blueprint, AMTA recommended a 60 day filing window during which licensees of operational SMR systems in the defined area would be permitted to request the use of their frequencies throughout the area as an individual or consortium applicant. The Association further suggested that instances of mutual exclusivity be resolved by ranking applicants based on the number of frequencies included in their proposals. Lower-ranked applicants would be awarded all channels requested that had not already been assigned to a higher-ranked entity.

27. AMTA recommended that approach for several reasons. First, because it would require no lottery, competitive bidding or

comparative evaluation except to identify the number of frequencies, it would be easy for the FCC to implement. For that same reason, it would permit rapid processing of applications and, therefore, issuance of licenses. In those respects it was consistent with the third of AMTA's five objectives.

28. The second, and perhaps even more important, rationale for the Blueprint approach was the expectation that it would encourage (but not mandate) the inclusion of smaller operators within the market, thereby advancing the Association's second objective. Larger operators would have an incentive to seek the participation of smaller system owners to expand the number of channels in the application. Additionally, a number of smaller licensees could combine their spectrum and secure a comparatively lower ranking. Reasoned business decisions regarding the need to affiliate with other parties would dictate the applicants' rankings rather than an arbitrary random selection process.

to AMTA's Blueprint, the FCC proposal would establish a 30 day filing window during which qualified applicants, individually or as part of a consortium, could apply for an EMSP authorization.[12] Applications which are not mutually exclusive would then be granted; the rest would be designated for lottery. The FCC then proposes a 60 day negotiation period during which applicants could attempt to avoid a lottery by resolving mutually exclusive situations. However, consideration for the necessary amendment or withdrawal of applications would not be permitted. Applications which remain mutually exclusive in any respect would be ranked randomly by lottery. Higher-ranked applicants would be assigned frequencies not already awarded to a lower-ranked licensee as long as there were sufficient frequencies to satisfy the applicant's specified minimum.

30. The FCC tentatively rejected AMTA's proposal on the basis that there is no clear nexus between number of channels and system efficiency. While AMTA agrees that optimally designed systems with limited channel resources can yield substantial spectrum efficiencies, the Association continues to believe that its proposed approach is more likely than the FCC's to be easily implemented, to encourage broad participation on a relatively equal basis, and to produce systems with greater efficiency capabilities. Nonetheless, if the FCC's proposed system is to be adopted, AMTA

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[12] AMTA recommends that eligibility be limited exclusively to <u>licensees</u> of operational facilities, not non-licensee system managers or other such entities. System managers who are also licensees would be free, of course, to invite those operators whose systems they manage to participate in a consolidated application.

recommends the following modifications.

31. AMTA first assumes that the FCC will adopt the Association's earlier suggestion that all applications include system designs which will enable the FCC to determine whether applicants are capable of satisfying EMSP construction requirements. Only demonstrably qualified applicants should be designated for lottery and included in the negotiation process.

32. The Association further recommends that the FCC eliminate its prohibition against consideration passing among applicants as a result of that process. Negotiations are not typically successful unless the parties perceive themselves to have been compensated in some way for what they surrender. Consideration could encompass any and all benefits that flow to a party. It could be defined as cash, an interest in the other party's proposed system, a mutual agreement to delete frequencies, an agreement to withdraw from one market in exchange for the other party's withdrawal from a different area, or other compensation. The Association believes that such arrangements must be permitted if the negotiations are to have the desired result. As long as the process is limited to truly qualified applicants, those capable of

also be considered a maximum in awarding frequencies pursuant to a lottery. If not, all applicants would presumably specify a minimum of two channels, thereby effectively ensuring an EMSP license for all channels not previously assigned. That result would not appear to further the FCC's desire to resolve mutually exclusive situations by negotiation.

34. Alternatively, if the FCC were to award to lottery selectees only the number of frequencies specified, EMSP authority for channels used by multiple participants might not be granted to any of them. However, unlike unconstructed spectrum, it would likely have limited wide-area utility if awarded to a second stage applicant which would have to provide co-channel protection to existing facilities.

35. The Association has considered this aspect of the FCC's proposal carefully. On balance, it has determined that requiring applicants to specify a frequency minimum will not advance the interest of EMSP applicants, of existing SMR operators, or of the Commission unless that number is also used as a cap on the frequencies to which the applicant is entitled. To the extent that it was intended to promote good faith negotiations among mutually exclusive applicants, AMTA suggests that the submission of a system design, as described above, in conjunction with the pre-lottery, rather than post grant, economic commitment described <u>infra</u> will better ensure that result.

36. The FCC proposes that EMSP licensees construct their

systems within one year, consistent with current FCC requirements.[13] Alternatively, the Notice would permit an up to five year construction period. However, extended implementation would be approved only if the licensee placed a sum equal to its estimated cost of completing construction in an escrow account or obtained a performance bond for the same amount. Existing facilities included in satisfying the construction requirement would not be included in that estimate, thus no funds would need to be set aside for them. These steps would be required only after an EMSP grant had been awarded. Notice ¶40.

37. AMTA urges the Commission to modify this aspect of the Notice to require the proposed financial commitment after the negotiation period but before a lottery is held. If the requirement is to be effective, it must be a pre-condition to inclusion in the lottery. The knowledge that this obligation must be satisfied if parties wish to participate in the random selection process will promote a successful negotiation process.

38. AMTA supports the FCC's proposal that prospective licensees post performance bonds or fund escrow accounts covering the costs of construction over an extended implementation period. Given the magnitude of the authorizations being awarded, that level of commitment is an appropriate method of insuring that only applicants with a bona fide interest in and the capabiltyle of constructing and EMSP system will participate in the lottery process. Thus, to the extent that the Commission has authority to

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[13] 47 C.F.R. §90.631(e)

impose such obligations and, more critically, to mandate forfeiture to the federal government if the licensee fails to construct, AMTA encourages the FCC to exercise that authority.

39. A variety of other federal agencies, including the Departments of Agriculture, Commerce, Energy, Housing and Urban Development, Interior and State, the Federal Reserve Board, and Environmental Protection Agency, do require the posting of performance bonds as a measure of guaranteeing an obligor's commitment to fulfilling a variety of duties.[14] Additionally, the FCC has recently incorporated the use of performance bonds as an alternative demonstration of an applicant's financial qualifications.[15] However, at least in respect to the recent

that the monies guaranteed by that bond would be forfeited to the agency or to the Federal Treasury should the licensee fail to satisfy its regulatory obligations. In that respect the mechanism has a different function and a significantly different ramification than that proposed in the instant Notice.

40. It is AMTA's understanding that the federal agencies