

imposed a freeze on PCP applications. After review, however, the FCC lifted the freeze because of concerns that the freeze: (1) was inadvertently "stranding investment in ongoing projects" and delaying the provision of service to the public; and (2) would have a "sufficiently widespread" negative impact.²⁷

In the instant case, the freeze on the filing of SMR applications will: (1) strand capital expenditures, (2) result in denial of communications service and (3) impose a widespread negative impact on applicants and the public. The Petitioners therefore submit that the Commission should lift this freeze as it has others.

V. THE LICENSING PROCESS SHOULD NOT BE INFLUENCED BY THE EXPECTATION OF AUCTION REVENUES.

It appears that a significant, perhaps determinative, motivation for suspending the acceptance or processing of additional 800 MHz SMR applications is to provide an opportunity to auction this spectrum under new rules providing for wide-area authorizations. If this possibility influenced the Commission's decision, it is directly contrary to the dictates of Congress. Congress has stated:

[t]he licensing process, like the allocation process, should not be influenced by the expectation of federal revenues and the Committee encourages the Commission to avoid

²⁷ In re Amendment of the Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, Order, 8 FCC Rcd. 2460 (1993).

mutually exclusive situations.²⁸

Suspension of processing for the purpose of subjecting the pending applications to auctions is directly contrary to the explicit desires of Congress. The legislation makes it clear that the Commission shall have the authority to use auctions if auctions will promote the objectives set forth in Section 309(j)(3) of the Act.²⁹ The first objective listed under Section 309(j)(3) is to promote "the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays."³⁰ With respect to the pending SMR applications, the use of auctions will cause significant delays in the administrative process.

VI. RETROACTIVE APPLICATION OF POLICY IS DISFAVORED.

The courts have established tightly confined criteria for permitting administrative agencies to retroactively apply agency regulations. "Retroactive application of policy is disfavored when the ill effects of such application will outweigh the need of immediate application . . . or when the hardship on affected parties will outweigh the public ends to be accomplished."³¹

In the instant situation, if the pending applications are

²⁸ House Report No. 111, 103 Cong., 1st Sess., May 23, 1993, at pp. 258-259.

²⁹ 47 U.S.C. § 309(j) (1993).

³⁰ 47 U.S.C. § 309(j)(3) (1993) (emphasis supplied).

³¹ Iowa Power and Light Company v. Burlington Northern, Inc., 647 F.2d 796, 812 (8th Cir. 1981), cert. denied, 455 U.S. 907.

dismissed and must be refiled, the affected applicants will have to contend with spectrum auctions and the uncertainty of an entirely new licensing scheme. In the meantime, public safety applicants, among others, will have the ability to license any remaining General Category channels. By the time the current applicants are in a position to re-file their applications, many of the channels that might now be available will be licensed to other entities. Thus, retroactive application of new rules will have an unavoidable adverse impact on SMR applicants whose applications are currently pending at the FCC.

VII. CONCLUSION

Neither the freeze on the filing of new SMR applications nor the suspension of the processing of applications already filed with the Commission serves the public interest. Both the application freeze and the suspension of processing adversely affect the rights of parties who have acted in reliance on the Commission's rules and established regulatory processes. Similarly, both the freeze and the suspension of processing are contrary to the intent and requirements of the Omnibus Budget Reconciliation Act of 1993.

Accordingly, the petitioners request that the Commission: (1) immediately lift the freeze on the filing of new applications, and (2) resume the processing of applications already on file in the FCC's Licensing Division.

WHEREFORE, THE PREMISES CONSIDERED, the American Mobile Telecommunications Association, the Council of Independent Communication Suppliers, the Industrial Telecommunications Association and the National Association of Business and Educational Radio respectfully submit this Emergency Motion for Stay of Application Freeze and urge the Federal Communications Commission to act in accordance with the positions expressed herein.

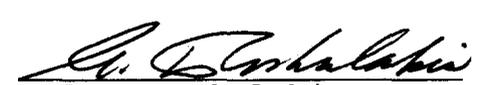
**AMERICAN MOBILE
TELECOMMUNICATIONS
ASSOCIATION, INC.**

By:


Alan R. Shark
President

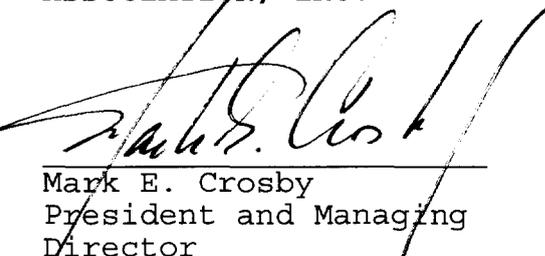
**COUNCIL OF
INDEPENDENT COMMUNICATION
SUPPLIERS**

By:


Andrew Daskalakis
Chairman

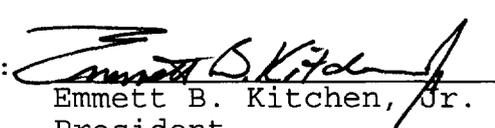
**INDUSTRIAL
TELECOMMUNICATIONS
ASSOCIATION, INC.**

By:


Mark E. Crosby
President and Managing
Director

**NATIONAL ASSOCIATION
OF BUSINESS AND
EDUCATIONAL RADIO, INC.**

By:


Emmett B. Kitchen, Jr.
President

CERTIFICATE OF SERVICE

I, Allison J. Dalseg, of the American Mobile Telecommunications Association, Inc., hereby certify that on this 30th day of August, 1994, copies of the forgoing Emergency Motion for Stay of Application Freeze were delivered by hand to the following:

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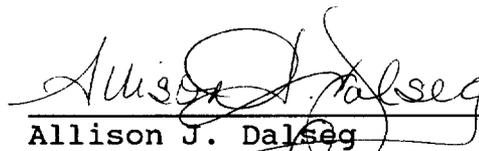
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