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FEDERAL COMMUNICATIONS COMMISSION
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January 30, 1995

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Mr. William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: ET Docket No. 94-124; RM-8308; In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications;

Dear Mr. Caton:

Enclosed, on behalf of Rand McNally & Company, are an original plus nine (9) copies of Comments in the above-captioned matter.

If you have any questions about this matter, please let me know.

Sincerely,

Ernest T. Sanchez

Ernest T. Sanchez
Counsel for
Rand McNally & Company

ETS:ck

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

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OFFICE OF SECRETARY

In the Matter of	)	
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Amendment of Parts 2 and 15 of the	)	
Commission's Rules To Permit	)	ET Docket No. 94-124
Use of Radio Frequencies Above	)	RM-8308
40 GHz for New Radio Applications	)	
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COMMENTS
OF RAND McNALLY & COMPANY

Rand McNally & Company ("RMC") submits these Comments in response to the Notice of Proposed Rule Making of the Commission in this proceeding, adopted October 20, 1994 and released November 8, 1994 ("Notice").

RMC is the copyright owner of the MTA/BTA Listings, embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its Commercial Atlas & Marketing Guide (the "MTA/BTA Map").[1] We understand that certain parties with an interest in this proceeding are urging, and the Commission is proposing, mandating use of RMC's MTAs as geographic boundaries for service areas for licensing Licensed Millimeter

[1] The MTA/BTA Listings and the MTA/BTA Map will be referred to collectively as the "MTA/BTA Listings."

Wave Services ("LMWS"). We submit these Comments to assert our strong objection to any attempt to make RMC's MTAs or BTAs the geographic boundaries for licensing LMWS, without a license from RMC.

I. RMC HAS NOT LICENSED USE OF ITS MTA/BTA LISTINGS IN CONNECTION WITH LMWS.

The MTA/BTA Listings are valuable intellectual property. RMC has made substantial investment in their development.

RMC has *not* licensed the MTA/BTA Listings in connection with LMWS. To date, RMC has licensed use of its MTA/BTA Listings for use only in connection with the following services:

> (i) 2 GHz broadband Personal Communications Services ("PCS"), as authorized in GEN Docket 90-314 or any successor proceedings;
>
> (ii) 900 MHz narrowband PCS, as authorized in GEN Docket No. 90-314 and ET Docket 92-100 or any successor proceedings;
>
> (iii) 800 MHz wide-area Specialized Mobile Radio Services or Expanded Mobile Service Providers, as authorized in PR Docket No. 93-144 or any successor proceedings; and
>
> (iv) Local Multipoint Distribution Services, as authorized in CC Docket No. 92-297 or any successor proceedings.

The existing license came about after RMC learned, in late 1993, that the Commission was considering use of its MTAs and BTAs as the geographic boundaries for certain types of personal communications services. We objected, explaining that the

Commission could not adopt these boundaries without RMC's consent, as the MTA/BTA Listings are protected by copyright and such action would constitute an unlawful taking of RMC's property.

Subsequently, RMC was approached by PCIA, the Personal Communications Industry Association. PCIA sought, and RMC granted, a blanket license so that all parties with an interest in the FCC proceedings specified in the license would be permitted to reproduce and use the MTA/BTA Listings *only in connection with those proceedings*, subject to the terms of the license. The license made the MTA/BTA Listings available in various forms to the Commission and to interested parties either directly from RMC, or indirectly through its licensees under the license.

We advised the Commission of our license agreement with PCIA, and of our consent to use of the MTAs and BTAs in the proceedings specified in the agreement, but only in those proceedings. We indicated then that we were willing to license use of the MTAs and BTAs on reasonable terms for use in other proceedings, if the parties with an interest in those proceedings sought such a license.

Since that time, the Commission mandated use of RMC's MTAs as the geographic boundaries for 900 MHz specialized mobile radio ("SMR") services. In connection with such mandate, the Commission expressly recognized RMC's copyright rights in the

MTA/BTA Listings, and that RMC's license with PCIA extends only to certain services.[2] Although RMC assumed that the Commission did not intend to proceed with such mandate without RMC's assent, RMC objected on the record to such use in the absence of an MTA/BTA license obtained from RMC. Subsequently, RMC was approached by AMTA, the American Mobile Telecommunications Association, and AMTA and RMC are in the process of negotiating the terms of a second blanket license agreement that would allow specified use of the MTA/BTA Listings by persons interested in certain Commission proceedings in connection with 900 MHz SMR. As the Commission has been advised, an important element and prerequisite of this blanket license agreement is the Commission's acknowledgement that it will include in its 900 MHz technical Order language notifying potential 900 MHz SMR grantees that they must comply with the terms of such blanket license agreement (or any alternative license obtained from RMC) and may not rely on the grant of an MTA-based SMR license from the Commission as a defense to any claim of copyright infringement brought by RMC against such grantee. RMC is hopeful that its negotiations with AMTA will conclude in the execution of a blanket license agreement that balances the legitimate interests of RMC in protecting its copyright rights with the interests of the Commission and potential 900 MHz SMR grantees.

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[2] *In re Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services,* GN Docket No. 93-252, Third Report and Order (adopted August 9, 1994; released Sept. 23, 1994) at 57 n. 197, 64 n. 218.

II. THE COMMISSION MAY NOT MAKE MTAs THE GEOGRAPHIC BOUNDARIES FOR THE LMWS SERVICES WITHOUT RMC'S CONSENT

The Commission has proposed in its Notice that RMC's MTAs should serve as the geographic boundaries for the LMWS services, even though RMC has not licensed use of the MTA/BTA Listings in connection with these services. In so doing, the Commission recognized RMC's copyright in the MTA/BTA Listings, noted that these services were not covered by the existing PCIA license, and encouraged interested parties and RMC to explore the extension of a license to cover the proposed LMWS.[3] Notice at 11-12 n. 28.

We appreciate the Commission's recognition of our copyright rights, and its suggestion that the parties explore a license. Nevertheless, the Commission skirted a fundamental issue in failing to acknowledge that use of the MTAs for this purpose requires RMC's consent, and has thereby made it easy for the parties to disregard the Commission's suggestion and RMC's rights. We want to make it clear that we strenuously object to use of our MTA/BTA Listings unless and until an appropriate license is entered.

The Commission has no authority to proceed without RMC's consent. The MTA/BTA Listings represent a significant investment on RMC's part. RMC did not seek to have the MTAs or BTAs used as the geographic boundaries for communications services. If the Commission mandates use of the MTAs and BTAs absent a license by RMC, it will amount to an unlawful taking of RMC's property. All parties to the relevant proceedings,

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[3] Note that LMWS services will *not* be covered under the proposed blanket license with AMTA.

and anyone with an interest therein, will contend that they may reproduce, adapt, and distribute the MTA/BTA Listings and MTA/BTA Map, effectively removing the copyright protection from these works. Moreover, the Commission will itself be an infringer of copyright.

We urge the Commission not to adopt BTAs as the geographic boundaries for licensing LMWS services and, indeed, not to adopt MTAs or BTAs as the geographic boundaries for any other services not covered by an existing RMC license, until an applicable license from RMC has been obtained. We also urge the Commission to make it clear to its potential LMWS grantees that unless the grantee obtains a license from RMC (whether pursuant to a blanket license agreement or other negotiated agreement), it may not rely on a grant of an MTA-based LMWS license from the Commission as a defense to any claim of copyright infringement brought by RMC against it. If the parties are unwilling to enter into a license with RMC, then the Commission should select different geographic boundaries for the LMWS services.

We remain willing to license use of the MTA/BTA Listings on reasonable terms so that all parties affected by and interested in Commission proceedings may reproduce, modify and distribute them. But RMC will not permit its property to be appropriated without just compensation and due process of law, and will take all necessary steps to remedy any unauthorized exercise of its copyright rights by the Commission or any other party.

III. CONCLUSION

We urge the Commission to refrain from jeopardizing RMC's copyright rights. The Commission should not mandate RMC's MTAs or BTAs as geographic boundaries for licensing LMWS services or for any other service not covered in advance by a license from RMC. If the parties are unwilling to enter a license, the Commission should select alternative geographic boundary definitions. We also urge the Commission to make it clear to its potential LMWS grantees that unless the grantee obtains a license from RMC (whether pursuant to a blanket license agreement or other negotiated agreement), it may not rely on a grant of an MTA-based LMWS license from the Commission as a defense to any claim of copyright infringement brought by RMC against it.

Respectfully submitted,

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Dated: January 30, 1995

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