APPENDIX C

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this Further Notice of Proposed Rule Making. Written public comments are requested on the IRFA.

Reason for Action: This rule making proceeding was initiated to secure comment on proposals for establishing a flexible regulatory scheme for the 900 MHz Specialized Mobile Radio (SMR) service that would promote efficient licensing and enhance the service's competitive potential in the commercial mobile radio marketplace. The proposals advanced in the Second Further Notice of Proposed Rule Making are also designed to implement Congress's goal of regulatory symmetry in the regulation of competing commercial mobile radio services as described in Sections 3(n) and 332 of the Communications Act, 47 U.S.C. §§ 153(n), 332, as amended by Title VI of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). The Commission also seeks to adopt rules regarding competitive bidding in the 900 MHz SMR service based on Section 309(j) of the Communications Act, 47 U.S.C. § 309(j), which delegates authority to the Commission to use auctions to select among mutually exclusive initial applications in certain services, including 900 MHz SMR.

Objectives: The Commission proposes to adopt rules for the 900 MHz SMR service that are intended to promote the growth of incumbent 900 MHz SMR systems, and emerging MTA SMR licensees, and to enhance the ability of all SMR providers to compete in the larger commercial mobile services market. The Further Notice of Proposed Rule Making seeks to establish competitive bidding procedures and a new licensing mechanism for the 900 MHz SMR service that will expedite service to the public and promote competition in the CMRS marketplace.

Legal Basis: The proposed action is authorized under the Budget Act, Pub. L. No. 103-66, Title VI, §6002, and Sections 2(a), 3(n), 4(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c), and 332(d) of the Communications Act of 1934, 47 U.S.C. §§ 152(a), 153(n), 154(i), 302, 303(g), 303(r), 309(i), 309(j), 332(a), 332(c) and 332(d), as amended.

Reporting, Recordkeeping, and Other Compliance Requirements: Under the proposal contained in the Further Notice of Proposed Rule Making, SMR licensees who obtain MTA-based licenses may be required to report information regarding location of their facilities and coverage of their service areas. SMR applicants seeking treatment as "designated entities" may also be subject to reporting and recordkeeping requirements to demonstrate compliance with our competitive bidding rules.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules: None.

Description, Potential Impact, and Number of Small Entities Involved: The Further Notice of Proposed Rule Making potentially affects numerous small entities already operating 900 MHz SMR systems in Designated Filing Areas that will co-exist with 900 MHz SMR MTA licensees. The competitive bidding proposals contained in the Further Notice of Proposed Rule Making also could affect small entities seeking initial licenses in the 900 MHz SMR service. The Further Notice of Proposed Rule Making proposes special provisions in the Commission's auction rules to benefit "designated entity" applicants, including small businesses. After evaluating comments filed in response to the Further Notice of Proposed Rule Making, the Commission will examine further the impact of all rule changes on small entities and set forth its findings in the Final Regulatory Flexibility Analysis.

Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives: This Further Notice of Proposed Rule Making solicits comment on a variety of alternatives. Any additional significant alternatives presented in the comments will also be considered.

IRFA Comments: We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines provided in paragraph __ of this Further Notice of Proposed Rule Making.

APPENDIX D
PETITIONERS AND COMMENTERS

COMMENTS FILED IN *NOTICE OF PROPOSED RULEMAKING*, PP DOCKET NO. 93-253, 8 FCC RCD 7635 (1993), PERTAINING TO 900 MHZ SMR

American Mobile Telecommunications Association, Inc.
Geotek Communications, Inc.
RAM Mobile Data USA Limited Partnership

REPLY COMMENTS FILED IN *NOTICE OF PROPOSED RULEMAKING*, PP DOCKET NO. 93-253, 8 FCC RCD 7635 (1993), PERTAINING TO 900 MHZ SMR

RAM Mobile Data USA Limited Partnership

PETITIONS FOR RECONSIDERATION FILED IN *THIRD REPORT AND ORDER*,GN Docket NO. 93-252, 9 FCC RCD 7988 (1994), PERTAINING TO 900 MHZ SMR

American Mobile Telecommunications Association, Inc.
Geotek Communications, Inc.
Personal Communications Industry Association
RAM Mobile Data USA Limited Partnership
Rand McNally & Company

COMMENTS/OPPOSITIONS TO PETITIONS FOR RECONSIDERATION FILED IN *THIRD REPORT AND ORDER*,GN Docket NO. 93-252, 9 FCC RCD 7988 (1994), PERTAINING TO 900 MHZ SMR

Motorola
Personal Communications Industry Association

REPLY TO COMMENTS/OPPOSITIONS TO PETITIONS FOR RECONSIDERATION FILED IN *THIRD REPORT AND ORDER*,GN Docket NO. 93-253, 9 FCC RCD 7988 (1994), PERTAINING TO 900 MHZ SMR

Personal Communications Industry Association

APPENDIX D (CONTINUED)

PETITIONS FOR RECONSIDERATION FILED IN *FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING*, PR DOCKET NO. 89-553, 8 FCC RCD 1469 (1993)

American Mobile Telecommunications Association, Inc.

EX PARTE FILINGS IN *FIRST REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING*, PR DOCKET NO. 89-553, 8 FCC RCD 1469 (1993), AND *THIRD REPORT AND ORDER*, GN Docket NO. 93-252, 9 FCC RCD 7988 (1994), PERTAINING TO 900 MHZ SMR

American Mobile Telecommunications Association, Inc.
Geotek Communications, Inc.
Personal Communications Industry Association
RAM Mobile Data USA Limited Partnership

CONCURRING STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

Title: In the Matter of Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool.

In today's decision, the Commission issues the service rules for 900 MHz specialized mobile radio (SMR) as well as a Further Notice of Proposed Rule Making (FNPRM) with respect to the auction rules. I support this long-awaited decision which will assure the further deployment of this SMR service. However, I concur with respect to the auction rules. By contemplating an auction scheme that is premised on granting a bidding credit for small businesses only, it appears that the Commission is abandoning its policy and rules which were designed to enhance ownership opportunities in other technologies for those that have historically lacked access to capital. This retreat seems to be based solely on speculation about legislative and judicial activity and in some cases, on state referendum to abolish similar policies. Regardless of my personal views about the effectiveness of these rules, I believe that the Commission should not modify its policy or its rules until such time as it is directed to do so.

In June 1994, the Commission took a monumental step to ensure the meaningful participation of small businesses, and female and minority-owned businesses in the provision of spectrum-auctionable services.[1] I believed, at that time, that the Commission had made a commitment to ensuring the diversity of new service providers allocated through the auction process by addressing the historic capital formation problems that was a part of Congress's mandate which granted the Commission auction authority.[2] While I remain committed to these objectives, I am concerned that the Commission has signaled a change in its policy by proposing a small business credit that would purportedly incorporate the majority of minority and female-owned businesses in the country. If that is the case, I am convinced that we will greatly diminish the effectiveness of our efforts to ensure diverse participation other than for those well-capitalized entities or individuals that make up a large portion of today's communications industry. In the end, I believe that this proposed

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[1] Implementation of § 309(j) of the Communications Act - Competitive Bidding, Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2348.

[2] *See*, Section 309(j) of the Communications Act.

modification of the auction rules for the service, could result in a 900 MHz SMR service that will lack participation by diverse service providers despite the Commission's efforts to the contrary.

It is clear that the political winds have changed with respect to objectives which attempt to level the playing field for females and minorities. Moreover, the Commission has suffered set backs that have recently included the elimination of the minority tax certificate policy[3] and the court's issuance of a stay for the C and F block auctions in broadband PCS.[4] Despite these challenges, I believe the Commission must forge ahead until their efforts in this area are affirmatively impeded by legislative or judicial determination. To that end, we must not "voluntarily" retreat from our stated goal of increasing ownership opportunities for minorities and women in new services solely in anticipation of further legislative or judicial action.

Further, while the FNPRM seeks to capture minorities and women under the umbrella of a very small business definition, I am concerned that the Commission's intentions may be misguided for several reasons. First, the Commission has a. statutory obligation to ensure the participation of minorities and female-owned businesses.[5] We have determined in prior decisions that this requires that the Commission address access to capital issues for these entities I anticipate that the proposed bidding credit of 10% for small businesses in this service will only be marginally effective for the attraction of financing in a service that is allegedly not as capital intensive as PCS. Second, it is questionable whether the proposed bidding credit provides a small business with the appropriate tools to successfully bid against the larger and well-capitalized incumbents or even other potential bidders that have greater access to capital. Third, experience has demonstrated to the Commission that diverse participation in auctioned services is unrealistic unless the rules are designed to truly address capital formation issues.[6] While successful participation by entities that have historically lacked access to capital is never guaranteed, we know that failure for

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[3] Self-Employed Persons Health Care Deduction Extension Act of 1995 (H. R. 831).

[4] Telephone Electronics Corporation v. FCC, NO. 95-1015, (D.C. Cir. March 15, 1995) (order granting stay).

[5] *See*, Section 309(j) of the Communications Act.

[6] For example, in nationwide narrowband PCS, a 25 percent bidding credit did not produce successful bidders among women and minority-owned applicants. In regional narrowband PCS, four of the nine winning bidders relied on a 40 percent bidding credit and installment payments to obtain licenses. *See*, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 10 FCC rcd 175 (1994) at ¶ 58.

these entities is likely without equal access to capital.

Finally, while this FNPRM does not represent a final determination, it is an unmistakable indication that the Commission is not entirely comfortable with its prior decision with regard to race and gender-based preferences. Therefore, I urge potential SMR providers, and potential participants in future auctions, to heed this signal by providing information that is not purely anecdotal, but which will allow the Commission to recognize the potential adverse impact of the proposed revisions to the auction rules. In the end, I have no doubt that a failure to meet this challenge will result in the increasingly diminished participation of businesses that have been underrepresented in the past in the newer and more expensive technologies.