

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
PR Docket No. 89-5587

In the Matter of)
)
Amendments 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 896-901/935-940 MHz)
Bands Allotted to the Specialized Mobile)
Radio Pool)
)
Implementation of Section 309(j) of the)
Communications Act - Competitive Bidding)
)
Implementation of Sections 3(n) and 322)
of the Communications Act)

DOCKET FILE COPY ORIGINAL

PP Docket No. 93-253

GN Docket No. 93-252

To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

RESPECTFULLY SUBMITTED,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC

By:



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Date: May 24, 1995

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COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

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/} The Association generally supports the Commission's proposals relating to the implementation of a competitive bidding process should mutually exclusive applications be filed for 900 MHz SMR spectrum, and takes this opportunity to discuss more fully certain aspects of the Commission's proposals.

^{1/} Second Report and Order and Second Further Notice of Proposed Rule Making (FCC 95-159), 60 FR 22023 (May 4, 1995) ("Second Further Notice").

I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry.^{2/} The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. The systems they operate are classified by the FCC as Private Mobile Radio Service ("PMRS") or Commercial Mobile Radio Service ("CMRS"), the latter being considered a sub-category of common carrier service.^{3/} Because these members will be affected by the competitive bidding procedures proposed in the Second Further Notice, AMTA has a significant interest in the outcome of this proceeding.

II. COMPETITIVE BIDDING PROCEDURES

A. Background

The Commission has not accepted applications for new 900 MHz SMR stations since 1987. The rule making proceeding affecting the continued licensing of this spectrum has been pending since 1989. The Commission did not have competitive

^{2/} These entities had been classified as private carriers prior to the 1993 amendments to the Communications Act. See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002 (b), 107 Stat. 312, 392 ("Budget Act").

^{3/} See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1418 (1994) ("CMRS 2nd R&O"), Erratum, 9 FCC Rcd 2156 (1994); Third Report and Order, 9 FCC Rcd 7988 (1994) ("CMRS Third Report and Order"), Erratum, 9 FCC Rcd ____ (1994).

bidding authority at the time the initial Notice of Proposed Rule Making^{4/} and the First Report and Order and Further Notice of Proposed Rule Making^{5/} were adopted, but stated in the Further Notice that should it be granted such authority, it would consider utilizing competitive bidding. In the CMRS Third Report and Order, the Commission determined that it would use competitive bidding to select from among mutually exclusive applications in the 900 MHz SMR service. The Second Further Notice requests comments on the specific bidding procedures. For the most part, the proposed bidding procedures are consistent with the general bidding regulations codified in Section 1 of the Commission's rules.^{6/} However, service-specific procedures are proposed for designated entities, including the definition of small business and the financing benefits to be afforded such entities.

B. Use of Simultaneous Multiple Round Auctions

The Commission tentatively concluded that simultaneous multiple round auctions were the most appropriate design for the 900 MHz SMR service. Such auctions generally are utilized where the licenses have a strong value interdependency, and result in the generation of higher per auction revenues. AMTA agrees with the Commission that simultaneous multiple round auctions are appropriate in this band since they will facilitate spectrum aggregation in a single geographic area as well as consolidation of

^{4/} Notice of Proposed Rule Making, PR Docket No. 89-553, 4 FCC Rcd 8673 (1989).

^{5/} First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd 1469 (1993).

^{6/} See 47 C.F.R. §§ 1.2101-1.2111.

multiple regions. Thus, AMTA encourages the Commission to adopt this competitive bidding design for the 900 MHz SMR spectrum.

C. Bidding Issues

Overall, the bidding procedures, i.e. bid increments, stopping rules, duration of bidding round, and activity rules, are the same as those utilized in the PCS and Interactive Video and Data Service ("IVDS") auctions. The Commission also has retained discretion to revise any of these rules should it become necessary before or during the auctions. AMTA supports the Commission's proposals in this area.

However, AMTA suggests that the Commission modify the collusion rules applicable to 900 MHz SMR license applicants to ensure that the rules reflect the discussion within the Second Further Notice. The Commission's proposal appears to rely on provisions codified in Sections 1.2105(c) and 1.2107(d) of its rules, but fails to reflect certain refinements of those regulations.

Specifically, Section 1.2107(d) does not appear to have been revised to include the subsequent adoption of Section 1.2105(c). Section 1.2105(c)(2) specifically permits applicants to modify their short form applications to reflect formation of bidding consortia, as long as such formation does not result in a change of control of the applicant and provided that the parties forming such consortia have not applied for any licenses in the same geographic areas. By contrast, Section 1.2107(d) states that the applicant must provide a detailed explanation of the terms, conditions and parties involved in any bidding consortia, and that such agreements must have been entered into prior to the filing of the short-form applications pursuant to § 1.2105. AMTA

recommends that the Commission revise Section 1.2107 to indicate clearly that consortia agreements entered into after the filing of the short-forms are permitted, subject to the limitations noted above, but must be disclosed with the long-form application filing.

D. Procedural and Payment Issues

The Commission proposal includes recommendations regarding auction requirements, such as when the applications must be filed and the use of Public Notice to announce such dates; amendment and modification of short-form application procedures; the amount and date of upfront payments; the amount and dates of down payments and full payments by winning bidders; penalties for bid withdrawals and defaults or disqualification of winning bidders; procedures for filing long-form applications; standards for Petitions to Deny and limitations on settlements; and transfer disclosure requirements. Such proposals apply to parties that are not considered "designated entities" and are similar, if not identical, to regulations established in Parts 1, 24, and 95 of the Commission's rules.

AMTA supports the adoption of the FCC's proposals, particularly the adoption of limitations on settlements. The Association is concerned that the 900 MHz SMR auction may attract participants that may not necessarily intend to provide commercial service. Because the 900 MHz SMR auctions are for relatively small blocks of spectrum, which likely will generate bids significantly lower than those typical of the PCS auctions, some purely speculative applicants may participate. Further, this potential problem could be exacerbated because, unlike PCS, this spectrum is populated by numerous incumbent licensees which have made very substantial investments in system

implementation and customer development, investments which would be at risk if entities are permitted to manipulate the auction process to "greenmail" incumbent operators. It is imperative that all parties be on notice that settlement arrangements between applicants will be restricted to reasonable and prudent expenses, and that transfers of bare licenses will be scrutinized carefully by the Commission.

E. Designated Entity Provisions

1. Bidding Credits

The Commission has proposed to provide small businesses, including those owned by members of minority groups and/or women, a ten percent (10%) bidding credit to be applied against the winning bid(s) of such entity. No separate bidding credits are proposed based on minority, female or rural telephone company status. The small business bidding credits would be available for all channel blocks.

In its March 23, 1995, ex parte filing ("Ex Parte Filing"), AMTA submitted that bidding credits should be provided for small businesses in line with those adopted for auctions in comparable spectrum bands. AMTA concurs with the Commission's assessment that a 10% small business bidding credit is reasonable based on the spectrum blocks and the number of licenses being auctioned. While larger bidding credits have been established in other services, this typically was dictated by the amount of spectrum, the number of licenses, or the size of the geographic area being auctioned. In those instances, more generous bidding credits were needed to ensure that designated entities had a genuine opportunity to acquire a license as mandated by Congress in Section 6002(a) of the Budget Act, adding Section 309(j) to the Communications Act of 1934,

as amended. Similarly, a 10% bidding credit is expected to promote active and successful participation by small businesses in the 900 MHz auction.

In its Ex Parte Filing, AMTA encouraged the Commission to limit bidding credits to those blocks in each MTA on which no incumbent licensee was authorized. Alternatively, AMTA suggested that the three least encumbered blocks in each MTA be open to bidders qualifying for credits. AMTA's concern was that incumbent licensees ineligible for bidding credits might find their spectrum a bidding target for anti-competitive purposes. These incumbent licensees have been restricted from system expansion, both spectral and geographic, for almost a decade. Any additional impediments to their continued development would be contrary to the public interest and the objectives of the Commission, a concern that must be addressed in the FCC's decision on this point.

2. Down Payment and Installment Payments

The Commission proposes to provide small businesses with an installment payment option should the entity be the winning bidder in the 900 MHz SMR auction. This installment option would permit the small business licensee to make a 10% down payment (5% of which would be due five business days after the bidding closes and the remaining 5% due five business days after the issuance of a public notice indicating the license was ready for grant), and to pay the remainder over ten years with interest charges fixed at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5%. During the first two years of the license term, interest-only payments would be required. AMTA understands that this installment payment would be available for any

winning bid by a designated entity.

AMTA agrees that the installment payment provision is a useful mechanism for promoting participation by small businesses in FCC auctions as mandated by Congress. The installment payment provision proposed for this band is comparable to those provided to small businesses in other services. Again, similar to allowing bidding credits on all available channel blocks, the Commission must consider whether a failure to limit the availability of small business installment payments to channel blocks which are not encumbered by incumbent licenses in a market, or to the three least encumbered channel blocks in an MTA, may be a further impediment to development in this spectrum band.

3. Eligibility

The Commission proposes to define a "small business" for purposes of 900 MHz SMR eligibility for the favorable financial benefits as entities with less than \$3 million in average gross revenues for the preceding three years. The Commission intends to adopt affiliation rules and a 25% attribution threshold similar to provisions used in the PCS auction rules.⁷¹

AMTA encouraged the Commission in the Ex Parte Filing to adopt a threshold for small businesses of not more than \$3 million dollar gross revenues for the preceding three years. Thus, the Association believes that the Commission is correct in its assessment that such a definition will encompass the majority of businesses owned by members of minority groups and women. Further, as the Commission notes, the 900 MHz SMR service is expected to have much lower capital entry requirements because

⁷¹ See 47 C.F.R. §§ 24.709, 24.720.

of the smaller channels blocks and number of channel blocks available. AMTA believes that favorable financial benefits should be limited to those entities, whether minority and/or woman owned or rural telephone companies, that meet the gross revenue standard.

III. CONCLUSION

AMTA generally supports the Commission's proposals for the procedures and design of the 900 MHz SMR auctions, except as specifically discussed above. For the reasons described above, AMTA urges the Commission to proceed expeditiously to complete this proceeding, consistent with the recommendations detailed herein.

CERTIFICATE OF SERVICE

I, Cheri Skewis, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 24th day of May, 1995, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:

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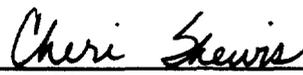
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