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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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	)	PR Docket No. 89-553
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	PP Docket No. 93-253
	)	
Implementation of Sections 3(n) and 322 of the Communications Act	)	GN Docket No. 93-252

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To: The Commission

PETITION FOR PARTIAL RECONSIDERATION
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),[1] pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. §1.106, respectfully requests that the Commission reconsider

[1]PCIA is an international trade association created by the merger of the National Association of Business and Educational Radio, Inc. ("NABER") and PCIA to represent the interests of both commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

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certain aspects of its Second Report and Order and Second Notice Further Notice of Proposed Rule Making ("2nd R&O") in the above-captioned proceeding.[2]

In the 2nd R & O the Commission adopted service rules for 900 MHz "Phase II" licenses. In addition, the Commission proposed rules for allocation of the licenses to be issued for Phase II. As detailed below, PCIA has significant concerns with several rules adopted in the proceeding and requests reconsideration of these issues.

I. The Commission Should Eliminate The Five Year Loading Rule For 900 MHz SMR Systems

In the Third Report and Order in GN Docket No. 93-252, the Commission eliminated loading requirements for Part 90 CMRS providers.[3] The Commission found that "... continuing to impose mobile loading requirements on some CMRS providers but not others contravenes the Congressional goal of regulatory symmetry and could unfairly impair the ability of certain licensees to complete."[4] However, the Commission elected to retain the five year loading requirement for 900 MHz SMR licensees.[5] At 900 MHz, the Commission stated that the SMR market is "... significantly less mature, both because initial licensing occurred more recently than at 800 MHz

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[2]60 FR 22023 (May 4, 1995).

[3]Cite.

[4]Third Report and Order at para. 190.

[5]At the request of NABER, the Commission had previously extended the loading date of 900 MHz systems by two years. Report and Order, PR Docket No. 92-17, 8 FCC Rcd 4914 (1992).

and because 900 MHz systems operate in limited service areas". Third Report and Order at para. 194.

In requesting reconsideration of the Commission's Third Report and Order, PCIA stated its belief that the Commission's action with regard to the 900 MHz SMR service is contrary to the public interest and places such licensees on an uneven playing field versus other CMRS licensees. Although PCIA stated that the Commission's concerns that the 900 MHz SMR service is indeed newer, PCIA stated that the primary reason for its "lack of maturity" is not the lack of loading criteria, but the Commission's failure to conclude its 900 MHz "Phase II" proceeding, which has now taken five years. As a result of regulatory delays, 900 MHz licensees have been unable to build systems where customers demanded coverage[6] and have yet to develop networks to compete with other services. PCIA stated that legitimate licensees in the band who have invested seven years of capital and labor into the 900 MHz SMR business should not now be forced to relinquish channels because the Commission failed to allow them to fully provide the service for which the 900 MHz SMR allocation was designed.

In the 2nd R & O, the Commission has elected to retain the loading rules for 900 MHz incumbent systems. The Commission's

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[6]Operators had the option of constructing secondary sites, but such construction was always with the understanding that such sites may be required by the Commission to be removed from service at any time. Therefore, while larger operators could afford to take significant capital risks by constructing secondary sites, most independents could not afford to take this risk. However, the Commission ultimately assigned primary status to such secondary locations.

rationale for its decision is that incumbent licensees have already been granted an extension of time to load their systems and incumbents can now obtain MTA licenses if they were previously unable to provide sufficient system coverage.[7]

PCIA again asks that the Commission reconsider this decision. PCIA believes that the Commission's action is contrary to the Omnibus Budget Reconciliation Act of 1993.[8] Specifically, the Senate and House Amendments in the Legislative History precludes the Commission from granting "... any right to a licensee different from the rights awarded to licensees [within the same service] who obtained their license through assignment methods other than competitive bidding..."[9]

Under the Commission's proposal, the geographic licensee will obtain many more rights than incumbent licensees. The fact that MTA licensees will not be required to meet loading requirements is the most glaring example of differing license rights.[10] For example, under the Commission's proposal, geographic licensees will obtain the rights to the spectrum held by an incumbent should the incumbent not be able to renew its authorization.[11] Yet the incumbent does not obtain the rights to the geographic license if

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[7] 2nd R & O at para. 57.

[8] Pub. L. No. 103-66 (Budget Act), §6002(b), 107 Stat. 312 (1993).

[9] House Conf. Rep., supra at p. 1174.

[10] Id. at para. 57.

[11] 2nd R & O, supra at para. 57.

that licensee fails. MTA licensees have an extended period to construct systems,[12] and will have more flexibility in the location of transmitter sites.[13] Clearly, the MTA license receives different rights that incumbent licensees, contrary to the expressed will of Congress.

Although an incumbent licensee now potentially has the opportunity to obtain an MTA license, and thereby avoid losing channels because of lack of loading, in reality few independent operators will have an opportunity to participate in the Commission's auction. As the auction is presently envisioned, an incumbent licensee will need to bid on a huge geographic area, which in the case of the Dallas MTA stretches from Louisiana to New Mexico, in order to retain the authorization. Many independent licensees do not have the desire or economic ability to participate in such an auction or to complete the system build-out over such a wide area. To require such incumbent licensees to pay for spectrum in areas where they do not wish to build in order to save their businesses is not in the public interest.

It must again be stressed that the failure of many 900 MHz SMR operators to load their systems was in many cases not their fault, but a lack of timely action by the Commission. 900 MHz SMR operators are not arguing in this proceeding that the equipment didn't work, that the economy did not allow for purchase of new radios by customers, or that the licensees were the victims of

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[12] Id. at para. 38.

[13] Id. at para. 37.

application mills. Rather, the failure to expand this service to its potential is the result of the Commission's inability to begin licensing "Phase II" systems, six years after initiating the proceeding. It is clearly unfair to legitimate operators for the Commission to now take back channels when relief has been granted to all the land mobile radio systems except 900 MHz systems.

The very limited geographic ability of 900 MHz SMR operators to serve their customers severely limited the growth of the systems. While the Commission states that obtaining an MTA license will free incumbents from their restraints, the relief is prospective only, and only for those operators which can afford to bid on channels.

On this basis, PCIA respectfully requests that the Commission eliminate the loading requirement as it applies to incumbent 900 MHz SMR licensees.

II. MTA CONSTRUCTION REQUIREMENTS SHOULD BE AMENDED

The Commission decided to require that MTA licensees cover two-thirds of the coverage of the MTA population at the end of the five year construction period.[14] The requirement is the same as the Commission's requirement in the Personal Communications Service ("PCS").

PCIA is concerned that the Commission's requirement for 900 MHz MTA licensees is too stringent. First, incumbent licensees already cover a significantly populated area in each MTA. Thus, the MTA licensee may have difficulty constructing a system which

[14] Id. at para. 40.

meets the construction requirement unless the MTA licensee has a relationship with the incumbent. In the case of the Los Angeles MTA, for example, a potential applicant may wish to construct a system which primarily serves the Las Vegas, Nevada area alone.[15] However, the Commission's construction requirement would mandate that the MTA licensee establish a relationship with the San Diego and Los Angeles licensees in order to meet the coverage requirement.

Similarly, PCIA agrees with Geotek Communications, Inc. ("Geotek") and RAM Mobile Data USA Limited Partnership ("RAM") that the use of 900 MHz SMR systems is fundamentally different than PCS, which in this case warrants a different construction scheme.[16] Presently constructed 900 MHz SMR systems are primarily utilized for dispatch and dispatch-related functions. Although the Commission argues that there may be some MTA licensees that seek to provide ubiquitous wide-area service to the public,[17] the fact is that the limited number of frequencies available to operators precludes such an offering because of the lack of depth of channels which a consumer-oriented interconnect system requires. As a result, successful 900 MHz SMR systems are (and will be) systems that are constructed not to meet the needs of the general public, but rather the business user. Therefore, construction patterns may not be similar to population patterns in a particular market.

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[15] Las Vegas was not a "Phase I" DFA area.

[16] See, 2nd R & O, supra at para. 39.

[17] Id. at para. 41.

On this basis, PCIA believes that the Commission should relax the coverage requirements for 900 MHz systems for MTA licensees. However, PCIA continues to believe that construction requirements are important to ensure that spectrum is not warehoused.

III. SECONDARY SITE PROTECTION MUST BE CLARIFIED

As the result of several requests, the Commission decided to afford primary protection for 900 MHz secondary sites licensed on or before August 9, 1994, as well as sites for which applications were filed on or before that date.

PCIA supports the Commission's decision. However, PCIA believes that the Commission should clarify one aspect of this decision to prevent difficulties in the future. Specifically, the designation of secondary 900 MHz sites as primary sites raises the possibility of interference between the secondary sites and primary sites of incumbent licensees in adjacent markets. In some cases, the distance between the sites could be minimal. Therefore, PCIA requests that the Commission clarify its decision to specify that such secondary sites are afforded primary protection **except** as they relate to the primary sites of co-channel incumbent licensees.

IV. CONCLUSION

WHEREFORE, the Personal Communications Industry Association respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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