

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



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
PR Docket No. 93-253

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In the Matter of)
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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)

PP Docket No. 93-253

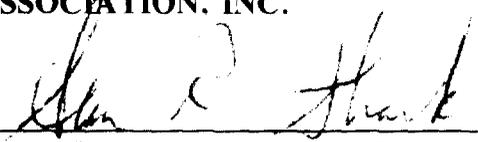
GN Docket No. 93-252

To: **The Commission**

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

RESPECTFULLY SUBMITTED.

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

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Date: June 12, 1995

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

In the Matter of)	
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Amendments of Parts 2 and 90 of the)	
Commission's Rules to Provide for the)	PR Docket No. 89-553
Use of 200 Channels Outside the Designated)	
Filing Areas in the 896-901/935-940 MHz)	
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Implementation of Sections 3(n) and 322)	GN Docket No. 93-252
of the Communications Act)	

To: The Commission

**REPLY 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 Reply Comments in the above-entitled proceeding.^{1/} Overall, the Comments filed by the various parties to this proceeding were consistent with those filed by AMTA. These Reply Comments address AMTA's support of Comments which focus on the protection of incumbent licensees and AMTA's concern with the Comments suggesting a higher gross revenue threshold for

^{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").

small businesses than proposed by the Commission.

A. Provisions for Designated Entities

The National Association of Black Owned Broadcasters ("NABOB") asserts that the Commission has failed to comply with Section 309(j) of the Communications Act of 1934, as amended (the "Act") by not providing separate provisions for minority owned businesses. NABOB, therefore, suggests that the Commission provide a 25% bidding credit for all minority-owned businesses having up to \$125 million in gross revenues and limit bidding eligibility on 20% of the channels to minority owned companies. NABOB provides no relevant information in connection with the licensing or ownership of 900 MHz SMR services by minority businesses.

AMTA disagrees with NABOB's premise that the Commission must provide additional financial provisions for minority owned businesses over and above those provided generally for small businesses. Unlike other telecommunications services, the barriers to entry in the 900 MHz SMR service have been extremely low in economic terms. When the initial licensing of this service commenced, there were no filing fees and the initial application preparation required no technical information, just a name, address and market requested. Further, vendor financing has been prevalent in the 900 MHz SMR industry which allowed construction and operation of systems by persons which might not have otherwise been able to obtain outside financing. The 900 MHz SMR industry, therefore, has been comprised of more diversified licensees

than many of the other telecommunications services. Accordingly, unlike other telecommunications services, there is no need for the Commission to remedy past discrimination nor provide financial benefits to minority owned business unless such business meets the criteria of a "small business."^{2/}

B. Provisions for Incumbent Licensees

Southern California Edison ("SCE") urges the Commission to provide detailed information regarding the incumbent licensees in the bidding packages. SCE is concerned that potential bidders may not consider the number of incumbent licensees unless the information is contained within the bidding information distributed by the Commission. Without such information, unschooled bidders may bid in markets where construction benchmarks may be unable to be achieved because of the incumbent licensees' operations. This could result in such bidders initiating lobbying efforts to reduce or weaken the protections of the incumbent licensees or require waivers or amendments to the Commission's rules governing construction and operation of the 900 MHz SMR systems.

AMTA concurs with SCE's suggestion that substantial information be provided about the incumbent licensees in the bidding packages. Potential bidders in the 900 MHz SMR auction must be aware of the number and positions of incumbent licensees in an MTA. This information is critical to both

² See generally Adarand Constructors, Inc. v. Pena, Secretary of Transportation, et.al., No. 93-1841 slip op. (U.S. Supreme Court, June 12, 1995).

the potential licensee and the incumbent licensee. As pointed out by SCE, the initial licensing of 900 MHz SMR spectrum was in the 50 top metropolitan markets. The 900 MHz SMR stations which have been constructed, therefore, serve a significant portion of the population in many of the MTAs. Potential MTA winners may find that they are unable to achieve construction benchmarks or be required to construct portions of their systems in areas which are economically infeasible. Therefore, the Commission may find in coming years that it will be required to revisit the construction benchmarks or the protection required to be provided to incumbents. AMTA suggests that providing comprehensive information to potential bidders at the onset of the auction should ensure that the Commission will not need to address such further changes to the 900 MHz SMR service rules.

C. Amount of Bidding Credit

AMTA supported the Commission's proposed bidding credit for small businesses of 10%. However, several incumbent licensees (and NABOB) suggested that the proposed bidding credit was too low. CeISMeR recommends that the bidding credit be increased to 20%. CeISMeR submits that the record in the narrowband PCS proceeding demonstrates that in the absence of a set-aside block for designated entities, a higher bidding credit for designated entities is necessary. Pro Tec Mobile Communications, Inc. ("Pro Tec"), a woman-owned, small business, suggests a bidding credit of 40% be provided to incumbent licensees providing coverage to 25% or more of the

population within an MTA and which are deemed small businesses or women/minority owned businesses. Pro Tec asserts that such an increase in the bidding credit for such incumbent licensees would increase the participation of small businesses and businesses owned by women and minorities.

AMTA has encouraged the Commission to select a bidding credit which provides the basis for meaningful participation by small businesses, including those owned by women and minorities. Both CelSMeR's and Pro Tec's suggested increases in the bidding credit, where potential licensees may be bidding against incumbents, have merit. However, AMTA remains supportive of the 10% bidding credit proposed by the Commission, in light of the other factors which must be taken into account, *i.e.* the number of licenses available and the amount of spectrum allotted to each license. Further, based on the foregoing factors, AMTA believes that there will be a significant interest from small businesses. Therefore, increasing the credit amount will not necessarily provide additional assistance to potential bidders. Nevertheless, to address the concerns of CelSMeR and Pro Tec, AMTA reiterates its recommendation that the bidding credit be provided only on spectrum which has no incumbent licensees, or at least on the three least licensed blocks in each MTA.

D. Definition of a Small Business

AMTA supports the Commission's proposal to define a "small business" as an entity which has average gross revenues for the three preceding years of less than \$3 million. A number of commenters disagree with the Commission's

proposed definition.

The Small Business Administration ("SBA") asserts that the \$3 million level is too low, because it believes that such amount does not take into account the funds necessary to finance the license and construct and operate the system. Also, the SBA submits that certain entities that are operating in the 800 MHz SMR industry may gravitate to the 900 MHz band to expand their telecommunications services. It, therefore, suggests that the Commission increase the level to \$15 million. The National Telephone Cooperative Association ("NTCA") also recommends adoption of \$15 million threshold. The Small Common Carrier Coalition ("SCCC") also disagrees with the Commission's proposed small business threshold and recommends the same small business revenue threshold as that adopted for PCS auctions. Alternatively, SCCC suggests a gross revenue cap of \$13.5 million, but also believes that the definition should be based on net revenues rather than gross revenues.

AMTA disagrees with these commenters because the basis for such recommendations rely on facts not relevant to the 900 MHz SMR spectrum. Motorola, which also concurred with the Commission's small business definition, provided estimated costs of construction of a 900 MHz system. Such figures, along with the information provided by AMTA in its Ex Parte Letter of March 23, 1995 regarding gross revenues and total assets of an

average 10-channel SMR operator,^{3/} demonstrate that a \$3 million gross revenue threshold is warranted and would more readily achieve the goals of the Commission. Nor will the MTA licensees of 900 MHz spectrum be required to relocate incumbent licensees as may be necessary for broadband PCS. Thus, the overall costs to the MTA winners for entry into the 900 MHz SMR service will be substantially less than for other services, suggesting that a lower gross revenue threshold should be utilized to define a small business.

The parties advocating higher thresholds premise such recommendations on a comparison of the 900 MHz SMR service to other services which have or will be auctioned. AMTA does not believe that such a comparison is adequate because of the differences in the number of licenses available and the amount of spectrum allotted to each license in the 900 MHz SMR service. Comparison to the broadband PCS auction is not relevant where the licenses to be auctioned in this service are either 30 MHz or 10 MHz wide. Each 900 MHz SMR license is an aggregate .25 MHz. Even if a bidder were to aggregate all the licenses in an MTA, it would acquire only a 5 MHz block of spectrum.

Additionally, the 900 MHz SMR service traditionally is focused on the business user rather than the individual residential consumer. Thus, the build-out of the system will most likely be traditional high-power stations rather than the cellular-like networks of broadband PCS, or even 800 MHz wide-area

³ AMTA believes that these figures are relevant as they reflect the type of small businesses which are currently involved in the SMR industry and would be likely to bid and require relief to participate in a meaningful manner in the 900 MHz SMR auctions.

systems. Accordingly, the costs of license acquisition, construction and operational costs will be significantly less than broadband PCS. Thus, adoption of a gross revenue test similar to broadband PCS is not warranted.

AMTA recognizes that the Commission must obtain approval of the SBA to define a small business in this proceeding. However, AMTA is concerned that the SBA's recommendation of a \$15 million threshold is too high.^{4/} This threshold may cause incumbent licensees to lose any meaningful participation in the auctions because larger, better financed companies will be able to obtain the same favorable financial benefits as the smaller incumbent licensees. AMTA provided figures to the Commission which reflect a typical small business SMR operator would have average gross revenues of less than one-half million dollars a year and total assets of less than one-half million dollars a year. Accordingly, a \$15 million threshold appears to exclude the incumbent licensees from participating in the auctions.

Finally, AMTA discourages the Commission from adopting a threshold based on net revenues rather than gross revenues. Depending on expenditures and the accounting method a business uses, a large, well financed company could demonstrate relatively low yearly net revenues. Thus, AMTA opposes the use of a net revenue threshold.

⁴ AMTA notes that SBA's comments indicate a business with average gross revenues of \$15 million has the wherewithal to construct and operate a 900 MHz system. This would suggest, then, that such a business does not need a credit to assist its entry into the 900 MHz SMR industry.

E. Conclusion

AMTA continues to support the Commission's proposals in this proceeding as set forth in its Comments. The Commission must consider the implications of providing too high a revenue threshold for the definition of small business. Should the threshold be excessive, incumbent licensees may be unable to compete with larger companies which may gravitate to the service because of the relatively low cost to entry in the industry. The 900 MHz incumbent licensees have had their business growth stymied for a number of years by the Commission's regulatory treatment of this service. A regulatory scheme which again places the incumbent licensee at a disadvantage or destroys the growth of an ongoing business is not in the public interest and should be rejected. 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, Rhonda Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 12th day of June 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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- * Commissioner Andrew C. Barrett
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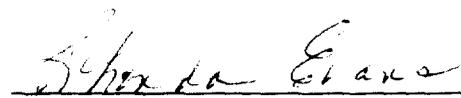
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